



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 12 सितम्बर, 2023 / 21 भाद्रपद, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 3rd July, 2023

No. Shram (A) 3-2/2023 (Awards) L.C. Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref. 89/2022	Smt. Rekha Devi	M/s Johnson & Johnson Ltd.	03-05-2023
2.	Ref. 90/2022	Sh. Chander Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
3.	Ref. 91/2022	Sh. Chand Lal	M/s Johnson & Johnson Ltd.	03-05-2023
4.	Ref. 92/2022	Smt. Hemlata Thakur	M/s Johnson & Johnson Ltd.	03-05-2023
5.	Ref. 93/2022	Sh. Sanjeev Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
6.	Ref. 94/2022	Sh. Satish Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
7.	Ref. 95/2022	Sh. Kripal Singh	M/s Johnson & Johnson Ltd.	03-05-2023
8.	Ref. 96/2022	Sh. Manoj Singh	M/s Johnson & Johnson Ltd.	03-05-2023
9.	Ref. 97/2022	Sh. Anil Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
10.	Ref. 98/2022	Sh. Narad Ram	M/s Johnson & Johnson Ltd.	03-05-2023
11.	Ref. 99/2022	Sh. Roshan Lal	M/s Johnson & Johnson Ltd.	03-05-2023
12.	Ref. 100/2022	Sh. Pulkit Sood	M/s Johnson & Johnson Ltd.	03-05-2023
13.	Ref. 101/2022	Sh. Umesh Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
14.	Ref. 102/2022	Sh. Rakesh Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
15.	Ref. 103/2022	Sh. Pankaj Rana	M/s Johnson & Johnson Ltd.	03-05-2023
16.	Ref. 104/2022	Smt. Kalpana Tanwar	M/s Johnson & Johnson Ltd.	03-05-2023
17.	Ref. 106/2022	Sh. Sharvan Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
18.	Ref. 107/2022	Sh. Padam Nabh	M/s Johnson & Johnson Ltd.	03-05-2023
19.	Ref. 108/2022	Sh. Gulab Singh	M/s Johnson & Johnson Ltd.	03-05-2023
20.	Ref. 109/2022	Sh. Ajay Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
21.	Ref. 110/2022	Sh. Umesh Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
22.	Ref. 111/2022	Sh. Sunny Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
23.	Ref. 112/2022	Sh. Yuvraj	M/s Johnson & Johnson Ltd.	03-05-2023
24.	Ref. 113/2022	Sh. Amar Chand	M/s Johnson & Johnson Ltd.	03-05-2023
25.	Ref. 114/2022	Smt. Kiran Bala	M/s Johnson & Johnson Ltd.	03-05-2023
26.	Ref. 115/2022	Sh. Shyam Lal	M/s Johnson & Johnson Ltd.	03-05-2023
27.	Ref. 116/2022	Sh. Ram Pal	M/s Johnson & Johnson Ltd.	03-05-2023
28.	Ref. 117/2022	Smt. Kalpana Devi	M/s Johnson & Johnson Ltd.	03-05-2023
29.	Ref. 118/2022	Smt. Meena Kumari	M/s Johnson & Johnson Ltd.	03-05-2023
30.	Ref. 119/2022	Sh. Mohinder Singh	M/s Johnson & Johnson Ltd.	03-05-2023
31.	Ref. 129/2022	Sh. Rakesh Sharma	M/s Johnson & Johnson Ltd.	03-05-2023

32.	Ref. 130/2022	Sh. Jitender Singh	M/s Johnson & Johnson Ltd.	03-05-2023
33.	Ref. 131/2022	Sh. Vir Singh	M/s Johnson & Johnson Ltd.	03-05-2023
34.	Ref. 132/2022	Sh. Ajay Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
35.	Ref. 133/2022	Sh. Ravi Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
36.	Ref. 134/2022	Sh. Jitender Singh	M/s Johnson & Johnson Ltd.	03-05-2023
37.	Ref. 135/2022	Sh. Deep Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
38.	Ref. 136/2022	Sh. Gurdyal Chand	M/s Johnson & Johnson Ltd.	03-05-2023
39.	Ref. 137/2022	Sh. Vipin Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
40.	Ref. 138/2022	Sh. Ravi Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
41.	Ref. 139/2022	Sh. Lakh Raj	M/s Johnson & Johnson Ltd.	03-05-2023
42.	Ref. 140/2022	Sh. Chottu Ram	M/s Johnson & Johnson Ltd.	03-05-2023
43.	Ref. 141/2022	Sh. Desh Raj	M/s Johnson & Johnson Ltd.	03-05-2023
44.	Ref. 142/2022	Sh. Vinod Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
45.	Ref. 143/2022	Sh. Vijay Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
46.	Ref. 158/2022	Sh. Ravinder Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
47.	Ref. 159/2022	Sh. Sandeep Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
48.	Ref. 160/2022	Sh. Ram Karan	M/s Johnson & Johnson Ltd.	03-05-2023
49.	Ref. 161/2022	Sh. Ravinder Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
50.	Ref. 162/2022	Sh. Amit Kumar	M/s Johnson & Johnson Ltd.	03-05-2023
51.	Ref. 163/2022	Sh. Kuldeep Singh	M/s Johnson & Johnson Ltd.	03-05-2023

By order,
Sd/-
(AKSHAY SOOD),
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 89 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Rekha Devi w/o Shri Munish Sharma, r/o Village and P.O. Majherna, Tehsil Baijnath,
District Kangra, H.P.Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Smt. Rekha Devi w/o Shri Munish Sharma, r/o Village and P.O. Majherna, Tehsil Baijnath, District Kangra, H.P., for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,17,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 43 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul,

Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,29,608/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**

- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper fit may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does

not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,17,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs.11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & And decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/

transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section

- (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative

term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 43 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh, Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in her Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that

such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court *vis-à-vis* by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions

prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is

guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression

"as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable

to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 17,202/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief.

Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 90 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Chander Kumar s/o Shri Gian Singh, r/o Village Tahlian, P.O. Jawali, Tehsil Jawali,
District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 13.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Chander Kumar s/o Shri Gian Singh, r/o Village Tahlian, P.O. Jawali, Tehsil Jawali, District Kangra, H.P., for his reinstatement in

service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,25,147/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), *vide* appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full &

final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,27,379/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,25,147/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? *..OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? *..OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation

Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar

situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act *i.e.* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour**

practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment *i.e.* two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places *i.e.* Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other

undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there

is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles

of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in

this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,25,147/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 91 of 2022
Instituted on : 21-02-2022
Decided on : 03-05-2023

Chand Lal s/o Shri Ram Lal, r/o Village Balute, P.O. Chammed, Tehsil and District Hamirpur, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Chand Lal s/o Shri Ram Lal, r/o Village Balute, P.O. Chammed, Tehsil and District Hamirpur, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,26,955/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no. 2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the

Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,89,334/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 26,955/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No

Relief

Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the

appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice

under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor jusitified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisons of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days,

in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties *i.e.* Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and

workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

- (ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in

that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to

make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION
25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that

such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter-V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court *vis-à-vis* by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no. 2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions

prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers, AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply

only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable

to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of **₹ 25, 26,955/-** or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 92 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Hemlata Thakur w/o Shri Jitender Singh, r/o Village Papahan, P.O. Jonkha Ratial, Tehsil Jawali, District Kangra, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Smt. Hemlata Thakur w/o Shri Jitender Singh, r/o Village Papahan, P.O. Jonkha Ratial, Tehsil Jawali, District Kangra, H.P. for her

reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,13,053/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "**Workman**" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full &

final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,81,757/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. **That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. **That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. **That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. **In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. **That the record of the case may kindly also be summoned.**
- F. **Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms

and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,13,053/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 14 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in

nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 36 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the

respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in her Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of fourteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to fourteen years (14) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act *i.e.* section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts

such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter-V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention

raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the

retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007**, decided on 14 August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations

received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu*

Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July, 2020 the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible

to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 13,053/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 93 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Sanjeev Kumar s/o Shri Subhash Chand, r/o Village Kathiala, P.O. Sohari, Tehsil Banganga, District Una, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Sanjeev Kumar s/o Shri Subhash Chand r/o Village Kathiala, P.O. Sohari, Tehsil Banganga, District Una, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹25,04,643/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no. 2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason,

which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,95,031/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,04,643/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants *i.e.* Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties *i.e.* Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically

that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed *w.e.f.* 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar

and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an

argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance

to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or

taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it’s adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has

preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,04,643/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 94 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Satish Kumar s/o Shri Narain Singh, r/o Village & P.O. Kharwar, Tehsil Bhoranj, District Hamirpur, H.P. . . . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
 For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Satish Kumar s/o Shri Narain Singh, r/o Village & P.O. Kharwar, Tehsil Bhoranj, District Hamirpur, H.P. for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹ 24,08,839/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also

conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,15,735/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by

referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,08,839/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C),

confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was

available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was

much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously

argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹ 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the

petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by

the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF

provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon

Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section

25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,08,839/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 95 of 2022

Instituted on : 21-02-2022

Decided on : 03-05-2023

Kripal Singh s/o Shri Joginder Singh, r/o Village Baranda, P.O. Baranda, Tehsil Nurpur,
District Kangra, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Kripal Singh s/o Shri Joginder Singh, r/o Village Baranda, P.O. Baranda, Tehsil Nurpur, District Kangra H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP, after receiving his full and final amounting to ₹ 24,07,069/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,35,268/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,07,069/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit ? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has

been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial

force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an

argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance

to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer,***

Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for

immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers, AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao Versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder

running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,07,069/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 96 of 2022
Instituted on : 22-02-2022
Decided on : 03-05-2023

Manoj Singh s/o Shri Subhash Chand, r/o Village & P.O. Badhal Thore, Tehsil Dehra, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Manoj Singh s/o Shri Subhash Chand, r/o Village & P.O. Badhal Thore, Tehsil Dehra, District Kangra H.P. for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹28,79,082/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,200/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 41 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,53,462/- as gratuity amount for service upto 22.12.2020 and ₹20,16,833/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The

rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹28,79,082/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was

over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and

tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as

provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an**

industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or

- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been

adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-

employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was

functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum- Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April, 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision

of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No 020/326/2020 decided on 17 July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So,

the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 28,79,082/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 97 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Anil Kumar s/o Shir Dharam Chand, r/o Village Ghatta, P.O. Dhamer, Tehsil & District Kangra, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Anil Kumar s/o Shir Dharam Chand r/o Village Ghatta, PO Dhamer, Tehsil & District Kangra, HP for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,12,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 34 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,92,074/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retranchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retranchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retranchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,12,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional**

circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his

cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be

paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road***

Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched" (Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there

is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers, AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the

closure need not be of the entire plant. A closure can also be of a part of the plant. In **Maruti Udyog Ltd. v. Ram Lal & Ors.** (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their

discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it’s adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union, AIR 1959 SC 1342* and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,12,202/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that**

he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 98 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Narad Ram s/o Shri Bhola Ram, r/o Village Belu, PO Khaneal Bangra, Tehsil Karson, District Mandi, H.P. (The name of District has been wrongly mentioned in the reference notification) . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Narad Ram s/o Shri Bhola Ram, r/o Village Belu, PO Khaneal Bangra, Tehsil Karson, District Mandi, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,35,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,04,780/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**

F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The

grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,35,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No. Not entitled to any relief.
Issue No. 2	No
Relief.	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to

concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka)"industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the**

other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

(a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section
- (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting

them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained

in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/ shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF

Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in

continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment

Is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in

service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation

as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,35,801/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 99 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Roshan Lal s/o Late Shri Balak Ram, r/o Village Sangri, PO Malau, Tehsil Sundernagar
District Mandi, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Roshan Lal s/o Late Shri Balak Ram, r/o Village Sangri, P.O. Malau, Tehsil Sundernagar District Mandi, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹25,10,784/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,05,705/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,10,784/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

(a) an undertaking in which--

- (i) less than fifty workmen are employed, or**
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**

(b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section**
- (2) **be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become

effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the

considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the

full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in

section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking.

Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under

the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply

on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,10,784/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 100 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Pulkit Sood s/o Shri Tilak Raj, r/o Village and P.O. Khaira, Tehsil Palampur, District Kangra H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Pulkit Sood s/o Shri Tilak Raj, r/o Village and P.O. Khaira, Tehsil Palampur, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,36,684/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the

petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,43,840/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. **That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. **That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. **That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. **In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by

referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,36,684/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. He volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had

opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termianction letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final

compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor jositified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chaper V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examiantion of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same anology of other regular employees, those who have been accomodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent

management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section
- (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or

(ii) **accumulation of undisposed of stocks; or**

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the

company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B,

EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very outset section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the

condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every

workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in

service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down

which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union* , AIR 1959 SC 1342 and *Goa MRF Employees*

Union versus MRF Limited 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,36,684/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 101 of 2022
Instituted on : 22-02-2022
Decided on : 03-05-2023

Umesh Kumar s/o Shri Pritam Singh, r/o Village and PO Ambota, Tehsil Chonari (Kaloh), District Una, H.P. . . . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Umesh Kumar s/o Shri Pritam Singh, r/o Village and P.O. Ambota, Tehsil Chonari (Kaloh), District Una, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹ 25,77,887/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,37,210/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ` 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,77,887/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less

than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which

was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and***

Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there

is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In

Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

- 10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."**

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union versus Lufthansa German Airlines And Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their

discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,77,887/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 102 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Rakesh Kumar s/o Shri Julfi Ram, r/o Village & PO Thandol, Tehsil Palampur, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Rakesh Kumar s/o Shri Julfi Ram, r/o Village & P.O. Thandol, Tehsil Palampur, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,36,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,54,290/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹ 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,36,415/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No. 1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for

medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control

lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as ***Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen***

Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.

27. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen

to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and**

is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2) be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not

be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no. 2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the

section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles

of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in

this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,36,415/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

R E L I E F

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 103 of 2022
Instituted on : 22-02-2022
Decided on : 03-05-2023

Pankaj Rana s/o Shri Subhash Chand, r/o Village Jatoli Chakran, P.O. Chamukha, Tehsil Rakkar, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Pankaj Rana s/o Shri Subhash Chand, r/o Village Jatoli Chakran, P.O. Chamukha, Tehsil Rakkar, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹23,88,784/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36

years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,08,341/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.

- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage

even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹23,88,784/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO. 1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of**

sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative

term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“ Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be

at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022,

assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹ 50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court *vis-à-vis* by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no. 2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section

25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork

with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance.

The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the

petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so.

Secondly, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 23,88,784/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in

accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 104 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Kalpna Tanwar w/o Shri Pulkit Sood, r/o Village & P.O. Khaira, Tehsil Palampur, District Kangra, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Smt. Kalpna Tanwar w/o Shri Pulkit Sood, r/o Village & PO Khaira, Tehsil Palampur, District Kangra, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving her full and

final amounting to ₹25,30,301/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "**Workman**" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid

₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,14,473/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any

dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,30,301/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final

amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter,

probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law

and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective,**

a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-

FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 39 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was

manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She

admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of fourteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different

footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no. 2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no. 2. Admittedly, the petitioner was engaged by the respondent no.1

to work in the present unit (respondent no. 2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and

compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007**, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award

for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017)**, decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 30,301/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 106 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Sharvan Kumar s/o Shri Amar Lal, r/o Village Bhadwal, P.O. Matour, Tehsil Dharamshala,
District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Sharvan Kumar s/o Shri Amar Lal, r/o Village Bhadwal, P.O. Matour, Tehsil Dharamshala, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹ 25,06,330/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad,

Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,75,193/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its**

plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated

as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25,06,330/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief.
Issue No.2	No
Relief.	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka)"industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that**

undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in

section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and

compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022,

assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no. 2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no. 2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section

- 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.**
- 77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.**
- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect,

the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court

Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section

25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,06,330/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 107 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Padam Nabh s/o Shri Mool Raj, r/o Village Doh, P.O. Rewalsar, Tehsil Blah, District Mandi, H.P. (The name of the district of the petitioner has been wrongly mentioned in the reference itself). . .Petitioner .

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Padam Nabh s/o Shri Mool Raj, r/o Village Doh, P.O. Rewalsar, Tehsil Blah, District Mandi, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹25,11,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 40 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,80,652/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day’s advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government,

Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,11,202/- is

proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the

money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had

issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the

establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio

or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position

on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after

rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of

statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced

by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this

benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019** (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and

the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,11,202/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 108 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Gulab Singh s/o Shri Sher Singh, r/o Village & P.O. Bhargaon, Tehsil Kotli, District Mandi,
H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Gulab Singh s/o Shri Sher Singh r/o Village & P.O. Bhargaon, Tehsil Kotli, District Mandi, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,12,830/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,86,056/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**

- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ` 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 25, 12,830/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No. Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically

reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur

Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termiantion letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termiantion letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimiantion in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or

(ii) **accumulation of undisposed of stocks; or**

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the

company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B,

EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the

provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the

provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:
"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving

in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in

alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25, 12,830/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 109 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Ajay Kumar s/o Shri Karam Singh r/o Village Barian, P.O. Bhaloun, Tehsil Banganga,
District Una, H.P. ...Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ajay Kumar s/o Shri Karam Singh, r/o Village Barian, P.O. Bhaloun, Tehsil Banganga, District Una H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,37,133/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,81,677/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 37,133/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these

letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the

action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:—

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and

compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My

attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the

payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations*** held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides. For compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF. Which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007**, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in

this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:—

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable

to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,37,133/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 110 of 2022

Instituted on : 22-02-2022

Decided on : 03-05-2023

Umesh Kumar s/o Shri Prakash Chand, r/o Village and P.O. Tikkar, Tehsil Nerchowk District Mandi, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 14.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Umesh Kumar s/o Shri Prakash Chand, r/o Village and PO Tikkar, Tehsil Nerchowk District Mandi, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B

EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,21,133/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 41 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every

completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,91,969/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innitio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any

dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,21,133/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement

amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termianction letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the peittioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as ***Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.***

27. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had

issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the

establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.-

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;

Provided that nothing in this section shall apply to—

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section

25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was

carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the

respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e. Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally

proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the

workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019** (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and

the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,21,133/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 111 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Sunny Kumar s/o Shri Jagdish Chand, r/o Village Kuther, P.O. Dhanotu, Tehsil Shahpur,
District Kangra, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Sunny Kumar s/o Shri Jagdish Chand, r/o Village Kuthar, P.O. Dhanotu, Tehsil Shahpur, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹23,92,985/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 34 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,03,600/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on**

the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹ 23,92,985/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into

evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri

Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its bussiness/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or

units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously

argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B,

EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving

in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in

alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 23,92,985/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 112 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Yuvraj s/o Shri Sardari Lal, r/o Village and P.O. Salari Thakur Dwara, Tehsil & District Kangra, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Yuvraj S/o Shri Sardari Lal R/o Village and P.O Salari Thakur Dwara, Tehsil & District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,23,133/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act,

wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,04,177/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty

under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,23,133/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically

that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar

and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and

acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At

the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer,*

Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for

immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers, AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v.

Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In **Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638**, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019** (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply

on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,23,133/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 113 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Amar Chand s/o Late Shri Jindu Ram, r/o Village Bhosh, P.O. Haripur, Tehsil and District Kullu, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. . .Respondents.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Amar Chand s/o late Shri Jindu Ram r/o Village Bhosh, P.O. Haripur, Tehsil and District Kullu, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,13,225/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,21,455/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,13,225/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as

provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an

industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting

them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’

(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained

in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) NO. 3735-3738 of 2007, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision

of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So,

the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,13,225/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 114 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Kiran Bala w/o Shri Sunil Dutt, r/o Village Lingwin, P.O. Dhaned, Tehsil & District Hamirpur, H.P. . . *Petitioner* .

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . *Respondents*.

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Smt. Kiran Bala w/o Shri Sunil Dutt, r/o Village Lingwin, Po Dhaned Tehsil & District Hamirpur, HP, for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving her full and final amounting to ₹25,56,622/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act,

wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,36,776/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty

under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25, 56,622/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**

- (i) less than fifty workmen are employed, or**
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional**

circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 39 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in his Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of fourteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS

before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the

factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and***

Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there

is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the

closure need not be of the entire plant. A closure can also be of a part of the plant. In **Maruti Udyog Ltd. v. Ram Lal & Ors.** (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,56,622/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby**

ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 115 of 2022
Instituted on : 23-02-2022
Decided on : 03-05-2023

Shyam Lal s/o Shri Budhi Singh, r/o Village Sarhandi, P.O. Dole, Tehsil Jawali, District Kangra, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. . *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Shyam Lal s/o Shri Budhi Singh, r/o Village Sarhandi, P.O. Dole, Tehsil Jawali, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹25,00,715/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,04,635/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-ininitio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall send the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,00,715/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termianition letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in

nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective,**

a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation

Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at

Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to

section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no. 2. It is by and large that the services of the petitioner were engaged through

appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-

employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) NO. 3735-3738 of 2007**, decided on 14 August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. **In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."**

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019** wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA no 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,00,715/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 116 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Ram Pal s/o Shri Rattan Chand, r/o Village Maskot, P.O. Naltety, Tehsil Dehra, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ram Pal s/o Shri Rattan Chand, r/o Village Maskot, P.O. Naltety, Tehsil Dehra, District Kangra, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,00,924/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,07,978/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on**

the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,00,924/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No. 1	No, Not entitled to any relief.
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into

evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged *vide* appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri

Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“ Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered

only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by

the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that *vide* appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to

workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched”. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount

of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section

25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April, 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others Versus Hotel Worker's Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. Versus Rameshwar P. Gawade* 2020 (5) SCC 316

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,00,924/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 117 of 2022

Instituted on : 23-02-2022

Decided on : 03-05-2023

Kalpana Devi w/o Shri Yuvraj, r/o Village Kot, P.O. Blindi, Tehsil Karsog, District Mandi, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Smt. Kalpana Devi w/o Shri Yuvraj, r/o Village Kot, P.O. Blindi, Tehsil Karsog, District Mandi, HP for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,36,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,21,341/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,36,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1.

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 14 years and now there are absolutely no chance of her re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional**

circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 36 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947.

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in her Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of fourteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his

cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to fourteen years (14) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be

paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road***

Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there

is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v.

Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their

discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union, AIR 1959 SC 1342* and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,36,801/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 118 of 2022
Instituted on : 23-02-2022
Decided on : 03-05-2023

Meena Kumari w/o Shri Vijay Kumar, r/o Village & P.O. Marwari, Tehsil Amb, District Una, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Smt. Meena Kumari w/o Shri Vijay Kumar, r/o Village & P.O. Marwari, Tehsil Amb, District Una, H.P., for her reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving her full and final amounting to ₹25,49,122/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of her re-employment are very blink and the petitioner has requested the respondent to adjust her on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/ shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner

was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ` 1,21,154/- as gratuity amount for service upto 22.12.2020 and ` 18,11,232/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing her services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹ 50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and her services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender her resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer her at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,49,122/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she had categorically reiterated almost all the averments, made thereto in the claim petition. She has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), confirmation letter (PW-1/C), termination letter (PW-1/D), refusal to accept letter (PW-1/E), increment letter (PW-1/F), demand notice (PW-1/G), acceptance letter (PW-1/H) and offer of Probation (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that she was initially engaged as a trainee in the factory. She further admitted that after the training was over, she was engaged on probation and thereafter her services were confirmed by the respondent

management. She again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. She denied that she was discharging the function of packing the material. She admitted that the factory was working properly till 2018. She denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. She admitted that 98 people in the factory who had opted for VRS. She denied that the factory was not working properly after the stoppage of supply of thread. She denied that the company had offered VRS to them. She admitted that meeting of all workers was conveyed in the factory on 21.10.2020. She admitted that there was no production in the factory after 21.10.2020. She had also feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. She admitted that she had refused to accept the details of the amount along-with termination and experience letter. She further admitted that the details of the full & final amount etc. were sent to her on her address by post. She denied that the amount of full & final settlement amount including ex-gratia was paid to her by the company. She admitted that she utilized the money for her personal work, paid by the company. She denied that the conciliation proceedings were initiated before the Labour Officer. She denied that she was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13 years and now there are absolutely no chance of her re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen*

Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.

27. ***Per contra***, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender her resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for her re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-

FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and**

is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,

- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

(i) financial difficulties (including financial losses); or

(ii) accumulation of undisposed of stocks; or

(iii) the expiry of the period of the lease or licence granted to it; or

(iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are

carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days’ prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed her/his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 37 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. She had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. She admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. She had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. She volunteered that only 2-3 meetings were held. She again feigned ignorance that she was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to her. She admitted that the full and final compensation amount was credited in her Bank Account and she had utilized the same for her personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, it is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder her onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A,

V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for

retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the

section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:—

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from

government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April 2019 wherein it has been held as under:—

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the

same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that she was forced to accept her full and final compensation is also

not tenable under law as she has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for her reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,49,122/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that she had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 119 of 2022
Instituted on : 23-02-2022
Decided on : 03-05-2023

Mohinder Singh s/o Shri Chuni Lal, r/o Village Dolwa, P.O. Dol, Tehsil Jawali, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondent.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Mohinder Singh s/o Shri Chuni Lal, r/o Village Dolwa, P.O. Dol, Tehsil Jawali, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,41,387/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner

had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 41 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,94,149/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad

and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,41,387/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no. 1	No. Not entitled to any relief.
Issue No. 2	No.
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--

- (i) less than fifty workmen are employed, or

- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in

accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative

term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in

between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of

section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the

services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist.

Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court

Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section

25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,41,387/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 129 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Rakesh Sharma s/o Shri Som Dutt, r/o Village Bhatoli Lammion, P.O. Dhanoti, Tehsil Nurpur, District Kangra, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Rakesh Sharma s/o Shri Som Dutt, r/o Village Bhatoli Lammion, P.O. Dhanoti, Tehsil Nurpur, District Kangra H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ₹24,41,901/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the

Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,58,446/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board.

Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,41,901/- is

proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the

money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020*, *Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431*, *Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342*, *Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316*, *Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432*.

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart

surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the

respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

(1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-

FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was

manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He

admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different

footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e. respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e. respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1

to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus the Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and

compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007**, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award

for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April, 2019** wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the

demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹24,41,901/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 130 of 2022
Instituted on : 03-03-2022
Decided on : 03-05-2023

Jitender Singh s/o Shri Pritam Singh, r/o Village Paphan, P.O. Jhonka Ratial, Tehsil Jawali,
District Kangra, H.P.Petitioner .

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Jitender Singh s/o Shri Pritam Singh, r/o Village Paphan, P.O. Jhonka Ratial, Tehsil Jawali, District Kangra H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,13,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad,

Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,31,911/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innito.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its**

plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retranchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retranchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated

as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,13,415/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:—

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of

sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative

term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“ Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be

at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter-V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022,

assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus the Presiding Officer, Labour Court, Chandigarh and Others AND the Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section

25-FF provides For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist.

Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court

Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section

25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of **₹24,13,415/-** or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 131 of 2022
Instituted on : 03-03-2022
Decided on : 03-05-2023

Vir Singh s/o Shri Sawar Chand, r/o Village Naraish, P.O. Piplage, Tehsil Bhuntar, District Kullu, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947.

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Vir Singh s/o Shri Sawar Chand, r/o Village Naraish, P.O. Piplage, Tehsil Bhuntar, District Kullu H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,11,202/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the

Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹ 3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,83,048/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done,

without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- D. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa “W” to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who

were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,11,202/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.

2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every

contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondent has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A

and V-B of the Act. The present case is covered under Chapter-V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan**

Trade Union Kendra, 2001 (2) SCC 87, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**

- (i) less than fifty workmen are employed, or
- (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no

application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty days' prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no

reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity,

early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter-V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this

provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so

on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under

the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007**, decided on 14th August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In **J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87**, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In **Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638**, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another, Civil Appeal Nos.**

4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that

the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,11,202/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor

maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 132 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ajay Kumar s/o Shri Prem Singh, r/o Village & P.O. Muhal, Tehsil Dehra, District Kangra,
H.P.Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ajay Kumar s/o Shri Prem Singh, r/o Village & P.O. Muhal, Tehsil Dehra, District Kangra, HP for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,39,301/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,03,936/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on**

the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,39,301/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief.	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into

evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri

Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

- "2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;**
- (ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:**
- Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,**
- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of**

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

(a) an undertaking in which—

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to deal with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B,

EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the

condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in

continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in

service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section

25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25, 39,301/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 133 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ravi Kumar s/o Shri Keshav Ram, r/o Village Throai, P.O. Charri, Tehsil Shahpur, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai 400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 13.12.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ravi Kumar s/o Shri Keshav Ram, r/o Village Throai, P.O. Charri, Tehsil Shahpur, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP. after receiving his full and final amounting to ` 25,02,226/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2-(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 17,79,550/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,02,226/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances**

as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before

2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the

factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus the Presiding Officer, Labour Court, Chandigarh and Others AND the Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and***

Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there

is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v.

Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their

discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the

evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,02,226/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 134 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Jitender Singh s/o Shri Bidhi Singh, r/o Village Aghar, P.O. Panjehra, Tehsil Nurpur,
District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947.

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Jitender Singh s/o Shri Bidhi Singh, r/o Village Aghar, P.O. Panjehra, Tehsil Nurpur, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹ 24,19,415/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹ 17,18,963/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,19,415/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as

provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an

industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting

them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21 day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained

in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

For compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately

before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to

the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers, AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be

calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union versus Lufthansa German Airlines And Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316**

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹24,19,415/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 135 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Deep Kumar s/o Late Shri Gopal Singh, r/o Village Ropa Seri, P.O. Piplage, Tehsil Bhunter, District Kullu, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Deep Kumar s/o Late Shri Gopal Singh, r/o Village Ropa Seri, P.O. Piplage, Tehsil Bhunter, District Kullu, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,21,801/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,83,946/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,21,801/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the

reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner

bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

Form ‘W’

(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of

thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of

the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or

taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the

proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15 January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder

running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,21,801/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 136 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Gurdyal Chand s/o Shri Telu Ram, r/o Village & P.O. Badhera. Tehsil Haroli, District Una,
H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 12.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Gurdial Chand s/o Shri Telu Ram, r/o Village & P.O. Badhera, Tehsil Haroli, District Una, HP, for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,31,066/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 36 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is

submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,02,143/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,31,066/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as

provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in

such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or

- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be

adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's

explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter-V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation

amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus Their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-

Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving

in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in

alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,31,066/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 137 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Vipin Kumar s/o Shri Madan Lal, r/o Village & P.O. Samela. Tehsil & District Kangra,
H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Vipin Kumar s/o Shri Madan Lal, r/o Village & P.O. Samela, Tehsil & District Kangra, HP for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,08,836/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,97,107/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,08,836/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .OPR .
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.—An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such

closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever

issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/ accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before

2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter-V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the

factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and***

Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in

hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of **₹25,08,836/-** or in alternative to enhance the compensation amount upto **₹50 lacs (₹Fifty Lacs)**, is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 138 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ravi Kumar s/o Shri Piar Chand, r/o Village Choachukrala, P.O. Choru, Tehsil Nadaun,
District Hamirpur, H.P. . . *Petitioner* .

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . . *Respondents*.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ravi Kumar s/o Shri Piar Chand, r/o Village Choachukrala, P.O. Choru, Tehsil Nadaun, District Hamirpur, H.P., for his

reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,24,702/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full &

final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,07,884/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms

and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,24,702/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

- "2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;**
- (ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:**
- Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--**
- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the

respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar

situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour**

practices”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other

undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine

transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17 July 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles

of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in

this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 25,24,702/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 139 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Lekh Raj s/o Shri Mohan Lal, r/o Village Chhikanala, P.O. Pipli, Tehsil Bhunter, District Kullu, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Lekh Raj s/o Shri Mohan Lal, r/o Village Chhikanala, P.O. Pipli, Tehsil Bhunter, District Kullu, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹25,01,251/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner

falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,94,389/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under: —

A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.

- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retranchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retranchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad

and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹25,01,251/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:—

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
 - (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in

that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of--

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to

make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla

Dear Sir/Madam

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that

such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions

prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the

gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance.

The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner

would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman *Firstly*, he is the employee of the respondent, which he has miserably failed to do so.

Secondly, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹25,01,251/- or in alternative to enhance the compensation amount upto ` 50 lacs (Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 140 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Chottu Ram s/o Shri Ganga Ram, r/o Village & P.O. Nanwar, Tehsil Baijnath, District Kangra, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference Ppetition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Chottu Ram s/o Shri Ganga Ram, r/o Village & P.O. Nanwar, Tehsil Baijnath, District Kangra, H.P., for his reinstatement in service w.e.f.

21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹23,91,003/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "**Workman**" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full &

final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,11,123/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innitio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any

dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹23,91,003/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the

respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been

accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act

meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by ordinance no. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter,

probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated

in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under: —

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have

not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the

principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in

this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹23,91,003/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 141 of 2022
Instituted on : 03-03-2022
Decided on : 03-05-2023

Desh Raj s/o Shri Arjun Singh, r/o Village & P.O. Silh, Tehsil Jwalamukhi, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Des Raj s/o Shri Arjun Singh, r/o Village & P.O. Silh, Tehsil Jwalamukhi, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹24,31,633/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner

falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,42,105/- as total retiral benefits after rendering service of more than 13 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innitio.

- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retranchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retranchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad

and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,31,633/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers.

Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The

petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to

adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.—

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in**

that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice

period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“Form ‘W’
(See rule 81 A)

FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and

compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh *vide* its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022,

assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-

FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA Provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the

gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F

of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union**, AIR 1959 SC 1342 and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment

letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹24,31,633/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹ Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 142 of 2022
Instituted on : 03-03-2022
Decided on : 03-05-2023

Vinod Kumar s/o Shri Om Parkash, r/o Village Kharouth, P.O. Ballh, Tehsil Palampur,
District Kangra, H.P. *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.
2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. *Respondents.*

Reference Petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeew Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Vinod Kumar s/o Shri Om Parkash, r/o Village Kharouth, P.O. Ballh, Tehsil Palampur, District Kangra H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving

his full and final amounting to ₹24,06,060/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?"

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of "**Workman**" as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid

₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,24,252/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon’ble Court deems fit an proper fit and proper may kindly also be passed in the interest of justice.”**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms

and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹24,06,060/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e. appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the peitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is sitll in existance though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accomodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate govenrment is wholly misconcieved, very precise in

nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹ Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law

and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J. K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

"25FFA. Sixty days' notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking;**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrily (3) in the provisions of section 25-

FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was

manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He

admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different

footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1

to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and

compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007**, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award

for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019** wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316** whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 24,06,060/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 143 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Vijay Kumar s/o Shri Rai Chand, r/o Village & P.O. Jalari (Haar), Tehsil and District Kangra, H.P. . .Petitioner .

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.01.2022, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Vijay Kumar s/o Shri Rai Chand, r/o Village & P.O. Jalari (Haar), Tehsil and District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹23,88,920/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 39 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many

others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,21,516/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:—

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its**

plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR

- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated

as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹23,88,920/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No. 2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there

was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation,

hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the

compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly,

closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was

issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there

was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and Etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment Of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied).

Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14 August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has

no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon

Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon **Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431**, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case **Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020** and also judgment of Central Administrative Tribunal Hyderabad Bench, in case **K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020** the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹23,88,920/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 158 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ravinder Kumar s/o Shri Rattan Singh, r/o Village Ghar, P.O. Harsar, Tehsil, Jawali, District Kangra, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ravinder Kumar s/o Shri Rattan Singh, r/o Village Ghar, P.O. Harsar, Tehsil, Jawali, District Kangra, H.P., for his reinstatement in service before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹18,30,922/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 41 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRs scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,12,500/- as gratuity amount for service upto 22.12.2020 and ₹17,18,422/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or

elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹18,30,922/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B),

statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as apointment letter, confirmation letter, termination letter etc. All these

letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹ 50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically

that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar

and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“ Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before

2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter-V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the

factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and***

Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term ‘retrenchment’ under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month’s notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F “as if the workman had been retrenched”(Emphasis Supplied). Section-FFA provides that sixty day’s notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that “where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

"It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act",

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus Their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in

hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹18,30,922/- or in alternative to enhance the compensation amount upto ₹ 50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner**

workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 159 of 2022
Instituted on : 03-03-2022
Decided on : 03-05-2023

Sandeep Kumar s/o Shri Ashwani Kumar, r/o Village Bhumani, P.O. Pukhari, Tehsil & District Chamba, H.P. . .*Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 10.11.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Sandeep Kumar s/o Shri Ashwani Kumar, r/o Village Bhumani, P.O. Pukhari, Tehsil & District Chamba, H.P., for his reinstatement in service before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹19,19,883/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 35 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 PM. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the nonpayment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid

₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,98,729/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-ininitio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹19,19,883/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the

factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as

provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconcieved, very precise in

nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, HP Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking

w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, atleast sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--
- (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.—

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or
- (iii) the expiry of the period of the lease or licence granted to it; or
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation

Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:—

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21" December 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at

Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but "retrenchment" under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject "**lay off and retrenchment**", "**special provisions relating to lay-off, retrenchment and closure in certain establishment**", and "**unfair labour practices**", section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to

section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month's notice in section 25-FFF and three month's in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no. 2. It is by and large that the services of the petitioner were engaged through

appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, It is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and The subject matter. Section 25-F prescribes The condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-

employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers** , AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

" It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "**Matters incidental thereto**" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316 whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd.* 2016 (9) SCC 431, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹19,19,883/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competant nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 160 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ram Karan s/o Shri Ram Krishan, r/o Village & P.O. Doli, Tehsil Ramshehar, District Solan, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H. P. . . Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate
For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ram Karan s/o Shri Ram Krishan, r/o Village & P.O. Doli, Tehsil Ramshehar, District Solan, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. after receiving his full and final amounting to ₹19,26,219/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹18,05,065/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on**

the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.

E. That the record of the case may kindly also be summoned.

F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct

events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹19,26,219/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . . *OPP*.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into

evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J)

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. He volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. He volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. He volunteered that there was no production in the unit with effect from October 2020 to December 2020. He volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri

Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e. Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient

provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

- "2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;**
- (ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:**
- Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—**
- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of**

such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.

- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) **financial difficulties (including financial losses); or**
- (ii) **accumulation of undisposed of stocks; or**
- (iii) **the expiry of the period of the lease or licence granted to it; or**
- (iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously

argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B,

EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ` 11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject **“lay off and retrenchment”**, **“special provisions relating to lay-off, retrenchment and closure in certain establishment”**, and **“unfair labour practices”**, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:—

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides

for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately

before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tidying over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my

humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :—

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :—

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :—

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation

as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another**, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under: —

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression "*Matters incidental thereto*" has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited* 2010 (15) SCC 432, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade* 2020 (5) SCC 316

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/S Wockhardt Ltd. And Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹19,26,219/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 161 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Ravinder Kumar s/o Shri Parkash r/o Village Khabbal, P.O. Katholi, Tehsil Jawali, District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 8.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Ravinder Kumar s/o Shri Parkash, r/o Village Khabbal, P.O. Katholi, Tehsil Jawali, District Kangra, H.P., for his reinstatement in service w.e.f. 21.12.2020 before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹19,24,324/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can

never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 38 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹ 11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹ 18,03,170/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure

under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner vide communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹19,24,324/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire

case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K. Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not? and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to

come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) “industrial establishment or undertaking” means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months,**
- (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the

reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner

bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

“Form ‘W’
(See rule 81 A)

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh, 174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of

thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company,

after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹ Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that Every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or

taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company Versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos. 25341-42 of 2017), decided on 23rd April, 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine its adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union*, AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K VenuGopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages (19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder

running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 19,24,324/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 162 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Amit Kumar s/o Shri Ishwar Dass, r/o Village Kasnol, P.O. Bhagotla, Tehsil Palampur,
District Kangra, H.P. . .Petitioner.

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H. P. . .Respondents.

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 04.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:—

“Whether the demand of Shri Amit Kumar s/o Shri Ishwar Dass, r/o Village Kasnol, P.O. Bhagotla, Tehsil Palampur, District Kangra, H.P., for his reinstatement in service before the Occupier/Factory Manager M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹18,90,029/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent No.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent No.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of **“Workman”** as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner

was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹ 1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,68,815/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as "retrenchment" under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of "last come first go". Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. **That the termination/retrenchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. **That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. **That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. **In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. **That the record of the case may kindly also be summoned.**
- F. **Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently *w.e.f.* 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the

reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service *w.e.f.* 21.12.2020 before the respondent after receiving his full & final amounting to ₹18,90,029/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? ..OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue No.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent

management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged *vide* appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee,

Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that the despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter *w.e.f.* 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. *Per contra*, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged *vide* appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants *i.e.* Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as

provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking w.e.f. 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e. Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

"2(k) industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,—

(a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit

thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this section shall apply to-

- (a) an undertaking in which—
 - (i) less than fifty workmen are employed, or
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.
- (2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or
- (ii) accumulation of undisposed of stocks; or

(iii) **the expiry of the period of the lease or licence granted to it; or**

(iv) **in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section."**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression "**Shall**" thrice (3) in the provisions of section 25-FFA and the use of same expression "**Shall**" as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 *w.e.f.* 14.6.1972 and inserted by the Act of 18 of 1957 *w.e.f.* 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, atleast sixty day's prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term "**undertaking**" find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term "**industry**". "**Undertaking**" is a concept narrower than "**industry**". The industrial establishment or "**undertaking**" means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the "**closure**" means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting

them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under:

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt. Solan, with effect from 21st December, 2020 for the reason's

explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully,

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-

M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to deal the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e. section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a moment to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At the cost of repetition, the law of the land as envisaged regarding three month’s notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month’s or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as *The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer, Labour Court, Chandigarh and Others AND The Divisional Controller, Mahasthra State Road Transport Corporation, Amravati versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations* held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, The conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workmen who has been in continuous service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if

the workman had been retrenched“. (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman “deemed to be retrenched” a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is “as if the workman had been retrenched” and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.
78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to

the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers**, AIR 1970 Supreme Court 860 wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman**, 1968 AIR 1002, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India Versus Labour Court and Others** 2006 LLR 851 Supreme Court, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society Versus Babita Arora and Others**, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount to closure within the meaning of Section 25FFF of the Act. In J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors. (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In Maruti Udyog Ltd. v. Ram Lal & Ors. (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with

Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment.

The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in **Globe Ground India Employees Union Versus Lufthansa German Airlines and Another, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017)**, decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto".

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner's case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it's adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression **"Matters incidental thereto"** has been more elaborately explained in the judgment passed by the Hon'ble Supreme court in case **The Management Hotel Imperial, New Delhi and others versus Hotel Worker's Union , AIR 1959 SC 1342** and **Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432**, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon **Godrej and Boyce Manufacturing Co. Ltd versus Rameshwar P. Gawade 2020 (5) SCC 316**

whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon'ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as fourty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand , which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it

is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹18,90,029/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**IN THE COURT OF SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Reference Number : 163 of 2022

Instituted on : 03-03-2022

Decided on : 03-05-2023

Kuldeep Singh s/o Shri Rikhi Ram, r/o Village Jloun, P.O. Dhroat, Tehsil & District Solan, H.P. . *Petitioner.*

VERSUS

1. M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, through its Authorized Signatory.

2. The Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, H.P. . *Respondents.*

Reference petition under section 10 of the Industrial Dispute Act, 1947

For the Petitioner : Shri Rajiv Rai, Advocate

For the Respondents : Shri Rajeev Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 06.10.2021, under section 10 of the Industrial Dispute Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

“Whether the demand of Shri Kuldeep Singh s/o Shri Rikhi Ram, r/o Village Jloun, P.O. Dhroat, Tehsil & District Solan, H.P. for his reinstatement in service before the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP after receiving his full and final amounting to ₹19,20,868/- is proper and justified? If yes, what relief the above aggrieved workman is entitled to from the above management/employer? and if not its effect?”

2. Material facts necessary for the disposal of present reference petition, as described in the statement of claim, are thus that the petitioner was engaged as general workman trainee by the Occupier/Factory Manager, M/s Johnson & Johnson Ltd., 58-B EPIP Phase-1, Jharmajri, Baddi, District Solan, HP (**hereinafter to be referred as the respondent no.2**), which is one of the unit of M/s Johnson & Johnson Pvt. Ltd., 501, Arena Space Behind Majas Bus Depot., Office Jogheshwari, Vikhroli Link Road, Jogeshwari (East) Mumbai-400060, (**hereinafter to be referred as the respondent no.1**), vide appointment letter for a period of six months, on basic salary of ₹3,000/- per month + allowances. Thereafter, the probation period of the petitioner was regularized. The appointment letter, probation letter and confirmation letter are placed on record. The respondent company has affixed a notice on the notice board on 21.10.2020, under section 25-FFA, of the Act, wherein the decision of closure of establishment was narrated by assigning the reason, which can never be said to be a valid reason on account of unavoidable circumstances, beyond the control of

the employer. Thereafter, the respondent company had started pressurizing the petitioner and other similar workers to tender their resignation, so as the company may escape from its statutory liability of retaining the petitioner as the employment of the petitioner was not unit based or meant only for its unit at Baddi unit, despite stipulation in the appointment letter that the company reserve the right to transfer or engage or adjust the petitioner at any plant, factory, associate company or sister concern of the company, which may be in existence or may come into existence, at any point of time during the employment. The respondent company is having its unit at various places, such as Baddi, Aurangabad, Hyderabad, Telangana and other places etc. in the Country. The petitioner falls within the definition of “**Workman**” as provided under section 2(s) of the Act. The petitioner had rendered continuous service for more than 240 working days in each and every calendar year with the best of his ability, honesty, sincerity and integrity. The petitioner had crossed the age of 37 years and as such the chances of his re-employment are very blink and the petitioner has requested the respondent to adjust him on the analogy of other confirmed employees namely Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others similarly situated employees have been transferred/shifted/adjusted at Aurangabad, Telangana plant of the respondent company. The respondent company never paid any heed to the request of the petitioner.

3. Surprisingly, the respondent company had issued a letter dated 22.10.2020 along-with its enclosure letter dated 21.12.2020 to the petitioner and similar situated persons, wherein it was conveyed that since no settlement has been arrived between the parties, as such the services of the petitioner is terminated on 21.12.2020 at 5:00 P.M. In the aforesaid notice, the petitioner was also conveyed the details of payment made to the petitioner including ex-gratia, gratuity etc. The petitioner was not paid the annual increment for the year 2020-21 and the non-payment of annual increment is illegal, without following the procedure and against the provisions of the Law. It is submitted that the VRS scheme was launched in June 2009 for 82 junior employees. The petitioner was not paid the benefits of complete statutory compensation which was to be calculated at the rate of average pay which includes the allowances in terms of section 25-N, 2(aaa) and 2 (rrr) of the Act.

4. The perusal of acceptance letter dated 29.7.2019, issued to the junior Mr. Thakur Dass, who opted for VRS after rendering three years of service depicts that he has been paid ₹11,73,742/- (including early bird benefits, skill upgrade support and medical expenses) as full & final settlement amount on the basis of compensation at the rate of four month's for every completed year, whereas from the Annexure P/4, it can be seen that the petitioner has been paid ₹1,21,154/- as gratuity amount for service upto 22.12.2020 and ₹17,99,414/- as total retiral benefits after rendering service of more than 14 years in the respondent company. Shri Thakur Dass has been paid statutory compensation at the rate of four months for every completed years, whereas, neither such option of VRS nor such benefits were extended to the petitioner.

5. The termination of the services of the petitioner by discontinuing his services is nothing but termed as “retrenchment” under section 2-oo of the Act as the same has been done, without statutory notice as per requirement of section 25-N of the Act. The petitioner was neither given any independent or individual notice nor paid retrenchment compensation as per the requirement of section 25-N of the Act, hence, the said retrenchment is completely illegal and without the prior permission of the Government. Not only this, the respondent had also violated the provisions of sections 25-G and 25-H of the Act by not following the principles of “last come first go”. Further, the respondent has also contravened the provisions of section 25-N, 25-O, 25-Q and 25-R of the Act as the respondent company who violated the procedure laid down deserves penalty under the Act which provides for imprisonment to the wrong doer. It is denied that notice of closure under section 25-FFA was issued to the appropriate government. The demand notice raised by the

petitioner was duly replied by the respondent by rendering lame excuses. It is submitted that the termination of the services of the petitioner have been made arbitrarily and illegally by the respondent and further by paying inadequate amount under the alleged full & final settlement compensation amount.

6. In the footnote of the petition, the following prayer clause has been appended, which is reproduced for the sake of convenience, read as under:

- A. That the termination/retrenchment of the petitioner *vide* communication dated 21/22.10.2020 may kindly be declared illegal and void ab-innatio.**
- B. That the act and conduct of the respondents of not awarding annual increment due on 1st September, 2020 to the petitioner may kindly be declared illegal.**
- C. That the respondents may kindly be directed to reinstate the petitioner along-with all the consequential benefits including seniority and back-wages to any of its plant, factory, associates, company or sister concern, since the date of his discontinuation from the service. OR**
- D. In alternative the respondents may kindly be directed to enhance the full and final settlement amount/retrenchment compensation to the tune of ₹50,00,000/- on the analogy to which Shri Thakur Dass a junior fellow has been paid on completion of merely three years of service.**
- E. That the record of the case may kindly also be summoned.**
- F. Any other or further order as this Hon'ble Court deems fit and proper may kindly also be passed in the interest of justice."**

7. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, not come to the Court with clean hands, not a legal reference received from the Appropriate Government and the petitioner travelled beyond the terms of the reference in the claim petition.

8. On merits, it is an admitted position on record that the petitioner was engaged by the respondent and his services were governed by the Act, Rules and Standing Orders as well as terms and conditions laid down in the appointment letter for the service condition for the purpose of any dispute between the parties. The law laid down under section 25-FFA of the Act is very clear that the respondent company shall issue sixty day's advance notice expressing their intention to close down the industrial unit and Rule 81-A of Industrial Employment Rules, 1974 further provides that the employer shall sent the notice on prescribed Performa "W" to the Appropriate Government, Labour Commissioner, Conciliation Officer, Employment Exchange etc. In compliance to the provisions of section 25-FFA the respondent sent notice and also pasted a copy on the notice board. Thereafter, a meeting was convened by the respondent company with all the petitioners those who were working in the factory including the petitioner and they were apprised regarding the closing down of the factory as well as regarding the retrenchment compensation and other benefits, which the factory management was giving to them with motive to have golden handshake at the time of full & final financial dues as the respondent had legally closed down its Baddi unit by following the procedure in letter and spirit.

9. Again, it is emphatically denied that the respondent pressurized the petitioner to tender their resignation by making a lame excuse that the undertaking has been closed. There was no

request from the side of the petitioner to transfer him at any other places like Aurangabad or elsewhere. The respondent company had also issued the statutory notice under section 25-FFA on 21.10.2020, that the factory at Baddi will be closed permanently w.e.f. 21.12.2020 for the reasons stated therein. It is a denying fact that the respondent company had illegally terminated the services of the petitioner. It is absurd to contend that the services of a workman employed in a factory should be continued even after the said factory is closed and his services were discontinued with by following all mandates set out in the law. It is also denying fact that the reasons mentioned in the statement of reasons were not factually correct.

10. Furthermore, it is submitted that the industrial unit at Katha, Tehsil Baddi is manufacturing consumer products and there is no manufacturing unit of respondent in Hyderabad and Telangana. It is submitted that the respondent is having its unit at Aurangabad and number of persons have been engaged in the said factory after 21.10.2020. The petitioner was paid wages even when there was having production issue on account of quantified change in the production. It does not lie in the mouth of the petitioner to make the request for adjustment or transfer at this stage even after receiving full & final settlement amount. The services of the petitioner were terminated as per the law laid down by following the provisions of section 25-FFA, 25-FFF of the Act. There is no violation of any of the provisions of the Act. The VRS scheme was launched for each and every employee and not for a particular set of workmen.

11. The acceptance of VRS by Mr. Thakur Dass, payment so received by him and the full & final settlement amount paid to the petitioner upon the closure are to unrelated and distinct events as the petitioner was paid a handsome amount inclusive of Ex-gratia, Legal dues towards full and final settlement amount. On humanitarian considerations, the attempt of the petitioner by referring the case of Mr. Thakur Dass case cannot be linked to the closure of the Baddi unit. The grant of annual increment is not a absolute right and the same has to be earned by performance. The rest of the allegations were also denied by submitting that the averments made in the claim petition is nothing but a replete with false and fictitious. It is, therefore prayed, that this Hon'ble Court may kindly be pleased to dismiss the claim petition of the petitioner with punitive costs and answer the reference against the petitioner and in favour of the respondent management in the interest of justice.

12. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and by reaffirming and reiterating the contents those raised in the claim petition.

13. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, as is evident from zimni order dated 31.10.2022, which reads as under:—

1. Whether the demand of the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the respondent after receiving his full & final amounting to ₹19,20,868/- is proper and justified? If yes, what relief the petitioner is entitled to from the respondent, and if not, its effect? . . .OPP.
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .OPR .
3. Relief

14. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

15. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

16. For the reasons to be recorded hereinafter, while discussing issues for its final determination, my findings on the point-wise issues, are as hereunder:

Issue no.1	No, Not entitled to any relief
Issue No.2	No
Relief	Reference petition is answered in negative and the claim petition is ordered to be dismissed, as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

17. In order to substantiate its case, the petitioner had appeared into the witness dock as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he had categorically reiterated almost all the averments, made thereto in the claim petition. He has also tendered into evidence documentary proof i.e appointment letter (PW-1/B), letter of Probation (PW-1/C), confirmation letter (PW-1/D), termination letter (PW-1/E), refusal to accept letter (PW-1/F), increment letter (PW-1/G), demand notice (PW-1/H) and acceptance letter (PW-1/J).

18. In the cross-examination, there is clear cut admission on the part of the petitioner that he was initially engaged as a trainee in the factory. He further admitted that after the training was over, he was engaged on probation and thereafter his services were confirmed by the respondent management. He again admitted that the factory was indulged in manufacturing Cat Gat thread for medical purpose. He denied that he was discharging the function of packing the material. He admitted that the factory was working properly till 2018. He denied that the company had introduced Voluntary Retirement Scheme (in short VRS) in the year, 2019 after the stoppage of thread supply. He admitted that 98 people in the factory who had opted for VRS. He denied that the factory was not working properly after the stoppage of supply of thread. He denied that the company had offered VRS to them. He admitted that meeting of all workers was conveyed in the factory on 21.10.2020. He admitted that there was no production in the factory after 21.10.2020. He had also feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. He admitted that he had refused to accept the details of the amount along-with termination and experience letter. He further admitted that the details of the full & final amount etc. were sent to him on his address by post. He denied that the amount of full & final settlement amount including ex-gratia was paid to him by the company. He admitted that he utilized the money for his personal work, paid by the company. He denied that the conciliation proceedings were initiated before the Labour Officer. He denied that he was engaged for this factory, which was closed, by following the rules and regulations.

19. To refute the allegations of the petitioner, the respondent had examined Shri Jaspal Sharma, Law Officer of Labour Department as (RW-1), who has produced the letter dated 30.10.2020 Mark RX-1, letter dated 26.11.2020 Mark RX-2, letter dated 19.11.2020 Mark RX-3, letter dated 02.02.2021 Mark RX-4 and Form W Mark RX-5. He deposed that the original record is not traceable, as the dealing assistant had passed away.

20. Shri Vikas Dadwal, (RW-2) working as Employee Relationship Leader of the respondent company had appeared into the witness box, who had tendered into evidence his sworn

in affidavit (RW-2/A), wherein he also reiterated almost all the averments as made thereto in the reply. He also tendered into evidence the statement of account by JP Morgan Bank (RW-2/B), statement of account by HSBC Bank (RW-2/C), details Mark RX-6, VRS Scheme Mark RX-7 and authority letter Mark RX-8.

21. In cross-examination, the respondent witness had categorically admitted that the petitioner was engaged vide appointment letter, wherein it was specifically provided that the company will impart the training to the petitioner with any sister concern. He further admitted that as per appointment/probation letter, the normal age for retirement found mentioned in the appointment letter was 60 years. He admitted that the petitioner was engaged for unit at Baddi and the company in its discretion reserved the right to transfer to any of affiliates, subsidiary or sister Company. He admitted that as per confirmation letter, the term and condition of the appointment shall remain the same. He also admitted that no option for transfer was given to the workers. Volunteered that the option was not given to the petitioner as the plant was going for closure under 25 FFA of the Industrial Dispute Act. He denied that no opportunity was given the petitioner prior to the closure. Volunteered that the respondent management had launched the VRS scheme in 2019. He admitted that no increment was given to the workers in 2020-21. Volunteered that there was no production in the unit with effect from October 2020 to December 2020. Volunteered that the VRS scheme has no connection with the closure of the company. He again admitted that Thakur Dass had completed 3 years of services who had opted for VRS. He further admitted that Shri Thakur Dass was paid total amount of Rs. 11,73,742/-. He denied that the VRS scheme was available only to the workers those who had rendered services less than ten years. Volunteered that it was available to all the workers who had opted for the same. He denied that the notice for launching VRS scheme was not served upon the entire workers. There were 83 workers who had opted for the VRS scheme. He denied that that no permission was sought from the government for retrenchment of the workers under VRS scheme. He denied that the VRS scheme was a forged and tempered document. He admitted that the employees namely S/Sh. Rajat Dogra, Sourav Mukherjee, Ajay Sharma, Mohit Agarwal etc. were their regular employees. He denied that the overall control lies with the Mumbai Office. He admitted that M/s Johnson & Johnson is a multinational company. He admitted that 83 workers had applied for opting the VRS. He denied that no notice was issued before terminating the service of the petitioner and similar situated workers. Volunteered that the notice was issued under section 25-FFA of the Act. He denied that many new persons were recruited at Aurangabad Plant after 2019. He denied that the petitioners were not paid the extra benefits such as early bird benefit, medical expenses benefit, skill up-gradation benefits etc. as provided under the VRS scheme. He had denied that the petitioner was engaged by the company under transferrable job. He had also admitted that for the purpose of calculation of full and final settlement amount, the petitioner was paid two month's salary for every completed year of service as compared to four month's salary for every completed year of service under VRS Scheme.

22. This is the entire oral as well as documentary evidence adduced from the side of the parties.

23. Shri Rajiv Rai, Learned Counsel for the petitioner has contended with all vehemence that the petitioner was engaged as a general workman through the appointment letter. Lateron, the services of the petitioner were confirmed. Ld. Counsel had carried me through the each and every contents of appointment letter and confirmation letter, stating thereby that the terms and conditions of the services of the petitioner are factually governed by these letters. The engagement of the petitioner and further continuing in job is subject to the suitability of the job or availability of the vacancy. He argued that after the completion of the probation period, the services of the petitioner were regularized. After going through the contents of claim petition and entire documents placed on record, it is argued that the plant or unit is still in existence though the respondents has used the services of the petitioner for 13-14 years and now there are absolutely no chance of his re-

employment. Ld. Counsel for the petitioner strengthened his arguments on the basis of documentary proof such as appointment letter, confirmation letter, termination letter etc. All these letters were time and again referred by the Ld. Counsel for the petitioner and argued that the services of the petitioner could have been transferred or adjusted or accommodated at any other unit of the respondent. Ld. Counsel for the petitioner laid much emphasis to the averments made thereto in para 13 to para 21 of the claim petition and argued that despite various/numerous units owned by the respondent, the company had pressurized the petitioner to tender their resignation.

24. Ld. Counsel for the petitioner again argued that the petitioner and other similar situated workers are having very few/blink chances of their being re-employment. The issuance of notice under section 25-FFA dated 21.10.2020 and termination of the services of the petitioner vide termination letter w.e.f. 21.12.2020 are in clear cut violation of the principles of natural justice and salient provisions of the Industrial Disputes Act. No notice has been served or proved. The petitioner was subjected to discrimination in violation of terms and conditions of the appointment letter, as compared to regular and confirmed employees working in other capacities such as managerial, supervisory and administrative, those who were adjusted at Baddi and Aurangabad unit. The non-payment of increment has not been considered while paying the compensation, hence, there is a complete violation of the provisions of section 25-N of the Act. The VRS Scheme launched was not provided any option to the petitioner.

25. Ld. Counsel for the petitioner has also argued that the grant of benefits as given to Shri Thakur Dass, employee of the respondent, were not given to the petitioner as the petitioner was much senior employee of the respondent as compared to Shri Thakur Dass. The petitioner was not paid the complete financial dues as per the requirement of law while calculating the full and final compensation. It, is therefore, prayed that the claim filed by the petitioner may very kindly be allowed.

26. Ld. Counsel for the petitioner also placed reliance on the case law as laid down in case titled as *Rajneesh Khajuria Vs. M/s Wockhardt Ltd. & Anr. decided on 15.01.2020, Workmen Rashtriya Colliery Mazdoor Sangh Vs. Bharat Cooking Coal Ltd. (2016) 9 SCC 431, Hotel Imperial Vs. Hotel Workers Union AIR 1959 SC 1342, Godrej and Boyce Manufacturing Company Vs. Rameshwar P. Gawade (2020) 5 SCC 316, Goa MRF Union Vs. MRF Ltd. (2010) 15 SCC 432.*

27. **Per contra**, Shri Rajiv Sharma, Ld. Counsel for the respondent vigorously urged that the reference received from the appropriate government is wholly misconceived, very precise in nature and conclusive to adjudicate that after receiving the full & final settlement amount, the demand for reinstatement is neither proper nor justified. Admittedly, the petitioner was engaged by the respondent management for its Baddi Unit only and the issuance of appointment letter, probation letter, confirmation letter etc. are not a denying fact. Ld. defence Counsel argued that the company was indulged in a process of manufacturing Cat Gat thread to be used for biopsy/heart surgery, which has now become redundant in the present scenario. The respondent management had issued the requisite 60 day's statutory notice as per the requirement of section 25-FFA of the Act by displaying its intention to close down the unit and after making the full and final payment to the petitioner under section 25-FFF of the Act. There is a clear cut distinction between the Chapter-V-A and V-B of the Act. The present case is covered under Chapter V-A and not under Chapter V-B of the Act, therefore, the provisions of section 25-N have no application in the present facts and circumstances of the case. He prayed for the dismissal of the claim petition.

28. Written arguments/submissions were also submitted by the respective Learned Counsel for the parties and the same has been placed on record.

29. I have given my best anxious considerable thought to the respective oral and written arguments/submissions of the Learned Counsel for the parties and have also scrutinized the entire case record including written submissions placed on record by both the parties with minute care, caution and circumspection.

30. Thus, from a careful and meticulous examination of the entire case record, coupled with oral and documentary proof supplied on record, the case of the petitioner is manifestly to the effect that the petitioner was engaged as a workman by the respondent management on the rolls of the company after having been engaged vide appointment letter and the petitioner had joined the respondent management. Admittedly, the petitioner has successfully completed 240 working days, in a calendar year with the respondent. It is alleged that the respondent management had started pressurizing the petitioner to tender his resignation by making a lame excuse that the establishment has been closed upon which the petitioner had requested the respondent management to adjust/transfer the services of the petitioner in other unit on the same analogy of other regular employees, those who have been accommodated at various plants i.e Baddi, Aurangabad, Telangana etc. The non-payment of increment as well as the termination of the services of the petitioner will be amounting to illegal, unjust and contrary to the provisions of the Act. Therefore, the petitioner had prayed for his re-instatement into the service or in alternative for the payment of compensation, to be enhanced upto ₹50 lacs (₹Fifty Lacs) as a lump sum compensation.

31. To the contrary, it is vehemently submitted by the respondent management that the terms and conditions of the petitioner are governed by the appointment letter and also by salient provisions of the industrial law as laid down under the Act, Industrial Employment Standing Orders Act, H.P. Industrial Disputes Rules 1974, as amended from time to time etc. The respondent management is not in a position to run the industrial unit and had issued the requisite statutory 60 day's notice for closing down its business/establishment or unit or undertaking, as per the requirement of section 25-FFA of the Act and the petitioner had issued the requisite notice as provided in prescribed Form-F under Rule 81-A of Industrial Disputes Rules 1974, sent to concerned/appropriate authorities and also affixed a copy of the statutory notice under section 25-FFA of the Act, by displaying the same on the notice board. The respondent management was keen to have a golden hand shake by making the full & final payment under section 25-FFA of the Act, which was paid to the petitioner including Ex-gratia, Leave encashment, Gratuity, Bonus etc. Accordingly, the full and final payment has been paid to the petitioner in lieu of all financial dues as amenable to the petitioner, as per own entitlement of the petitioner.

32. Though, it has been specifically alleged by the respondent management in their reply that the company had expressed its swear intention to close down its establishment/undertaking *w.e.f.* 21.12.2020 by complying with all the codal formalities under the relevant provisions of law and only after giving the requisite statutory notice of 60 day's to all concerned parties i.e Appropriate Government, Labour Commissioner, Labour Officer, Employment Exchange etc. and also pasted a copy thereof by displaying the same on the notice board, thereafter, when the respondent management has expressed its intention by alleging the closure of the establishment/unit, then it is for the respondent management to prove the same on record. Needless to mention that one who alleges must prove on record. On this point, I am fully fortified by the decision of the Hon'ble Supreme Court reported in a case titled as **J.K Synthetics Vs. Rajasthan Trade Union Kendra, 2001 (2) SCC 87**, whereby it is held that the industrial tribunal was required to go into the question whether or not the retrenchment of the workman was justified or not. It is true that even if an industrial dispute is tried by the Industrial Tribunal, at the very inception, the Industrial Tribunal will have to first of all examine the industrial dispute referred to it, as an industrial dispute or not and the answer of this question would inevitably depends on the view whether the action taken by the respondent management regarding the closure of the industrial establishment or lock-out its unit? Their Lordships of Hon'ble Supreme Court in para 22 of the

judgment had observed their wisdom words that in order to justify the retrenchment of 1164 workers on the basis that there was a closure of a section of nylon plant or unit and, so in order to come to the conclusion whether the action of retrenchment was justified or not? The Industrial Tribunal would necessarily had to decide firstly whether or not there was a closure of an industrial unit or establishment or not?

33. Before, proceeding further, I would like to invite the attention of the parties to the various provisions of the Act, which are reproduced as under:

“2(k) industrial dispute” means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on:

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then,--

- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;**
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;**

“25FFA. Sixty days’ notice to be given of intention to close down any undertaking.-

- (1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:**

Provided that nothing in this section shall apply to-

- (a) an undertaking in which--**
 - (i) less than fifty workmen are employed, or**
 - (ii) less than fifty workmen were employed on an average per working day in the preceding twelve months, (b) an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work or project.**

- (2) **Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.**

25FFF. Compensation to workmen in case of closing down of undertakings.-

- (1) **Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched:**

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.

Explanation.--An undertaking which is closed down by reason merely of—

- (i) financial difficulties (including financial losses); or**
- (ii) accumulation of undisposed of stocks; or**
- (iii) the expiry of the period of the lease or licence granted to it; or**
- (iv) in a case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on; shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub-section.”**

34. It would be pertinent to mention that the law on the enunciation of the point would be summarized in the concludery part of this award of mine.

35. Verily, as far as concerning the benevolent provisions of section 25-FFA and 25-FFF of the Act, which carries the use of an expression “**Shall**” thrice (3) in the provisions of section 25-FFA and the use of same expression “**Shall**” as many as seven times (7) in the provisions of section 25-FFF of the Act. Both these provisions of section 25-FFA and 25-FFF are couched in a proper form and non-compliance thereof is the result of rendering the order of termination void-ab-initio or non-est in the eyes of law. The salient features enumerated in section 25-FFA and 25-FFF are the conditions precedent, which lays down the procedure regarding the conditions precedent to the workman in a case of closure of an undertaking or establishment. Admittedly, section 25-F has no application to a closed or dead industry and for this purpose only the provisions of section 25-FFA and 25-FFF were inserted by the Act of 32 of 1972 w.e.f. 14.6.1972 and inserted by the Act of 18 of 1957 w.e.f. 28.11.1956. It is clearly postulated under the provisions of section 25-FFA of the Act, whenever an employer who intends to close down an undertaking or establishment shall serve, at least sixty day’s prior notice before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the

reasons for the intended closure of the undertaking. Similarly, section 25-FFF provides specifically that where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched. It is also provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months. Admittedly, the Industrial Tribunal has no powers to enquire into the motive of the closure in order to find out whether the closure is justified or not. The payment of compensation and wages for the notice period have not been made condition precedent to the closure. However, the liability of employer to make payment remains, which may be enforced. The term “**undertaking**” find mentioned in section 25-FFF of the Act is nowhere defined, however, the relevant provisions uses the relative term “**industry**”. “**Undertaking**” is a concept narrower than “**industry**”. The industrial establishment or “**undertaking**” means an establishment or undertaking in which any industry carried on. Section 2 (cc) provides that the “**closure**” means the permanent closing down of a place of employment or part thereof. Partial closure of an undertaking is also allowed. Admittedly, closure by itself involves no dispute, it is merely the abolition of the employment. Even then the employer cannot claim it as an absolute right, however, the employer is restrained with reasonable restrictions by making the payment of full & final compensation to the workman/workmen in case of closing down of the undertaking.

36. Without lamenting much on the merits of the case, I would like to dealt with all the contentions raised before me at the bar by the Ld. Counsel for the petitioner who has strenuously argued that the respondent management had only closed one of its unit and at the same time the company is running numerous units at Baddi, Telangana, Hyderabad etc., it is argued that the petitioners who have almost crossed 35 years of age and there are very blink chances of getting them into new employment. The petitioner and other similar situated workers are required to be adjusted and accommodated in the other units on the same analogy as some employees have been adjusted/accommodated at Katha Plant of Baddi, Aurangabad unit, Telangana unit etc. There was no statutory permission obtained from the Appropriate Government for closing down the unit. He argued that the mandate of law have not been followed in the letter and spirit.

37. Undoubtedly, this Tribunal has got absolutely no power to go into the question or to enquire into the issuance of notice of closure, which is merely an expression of intention of the respondent management to close down its undertaking or establishment. The only moot question which arises that whether the closure was justified or not? However, the petitioner who had appeared into the witness box had completely feigned ignorance that the Alliance Formulation Company stopped manufacturing Cat Gat thread, which was no more usable item in case of heart surgery now a days in the entire world. The petitioner had duly admitted that the thread was manufactured in Alliance Formulation Company, and it is only the finishing work which was carried out in the present factory of the respondent management. The petitioner also admitted that there was no production carried out in the factory since 21.10.2020. It is also an admitted position on the record that the factory was closed w.e.f. 21.12.2020. The petitioner admitted that the meeting of the workers was convened in the factory on 21.10.2020. He had feigned ignorance that the company had issued notice of closure under section 25-FFA of the Act. He admitted that no reply in response to section 25-FFA was filed before the Labour Officer or Labour Commissioner. He had feigned ignorance that as many as six meetings were convened/held in between 21.10.2020 to 21.12.2020 with the respondent management. He volunteered that only 2-3 meetings were held. He again feigned ignorance that he was paid retrenchment compensation, gratuity, ex-gratia, leave encashment etc. In view of the aforesaid admissions on the part of the petitioner, I am of the considered opinion that the arguments advanced before me by the Ld. Counsel for the petitioner

bears no merits and assumes no significance in the eyes of law. Both the contentions raised at bar and admission made by the petitioner on record are contrary to each other. There is no substantial force in the contention raised at bar that no such notice under section 25-FFA of the Act was ever issued. At the stage, I would like to re-produce the notice issued under section 25-FFA of the Act by the respondent management, which is recapitulated as under: —

**“ Form ‘W’
(See rule 81 A)**

**FORM OF NOTICE OF CLOSURE TO BE GIVEN BY AN EMPLOYER UNDER
SECTION 25-FFA OF THE INDUSTRIAL DISPUTES ACT, 1947**

Name of employer Johnson & Johnson Pvt. Ltd; Address Plot No. 52 8, EPIP Phase 1, Jharmajri, Tehsil Baddi, District Solan, Himachal Pradesh-174103; dated the 21st day of October, 2020.

To

The Secretary to the Government of Himachal Pradesh,
Labour Department, Shimla.

Dear Sir/Madam,

Under section 25-FFA of the Industrial Disputes Act, 1947 (14 of 1947), we hereby inform you that we have decided to close down Johnson & Johnson Pvt. Ltd., located at Plot No. 58B, EPIP Jharmajri, Baddi, Distt Solan, with effect from 21st December, 2020 for the reason's explained in the annexure. The number of workmen whose services would be terminated on account of the closure of the undertaking is 93 (ninety three only).

Yours faithfully

For Johnson & Johnson Pvt. Ltd.”

38. Similarly, I again find no force or strength in the arguments advanced before me by the Ld. Counsel for the petitioner that the petitioner needs to be adjusted/transferred along-with similar situated workers like Ranjeesh Paul, Rajat Dogra and Saurav Mukharjee, those who have been accommodated at Katha Plant Baddi and similarly Ajay Sharma, Mohit Aggarwal, Sachin Jariyal, Gajinder Dhiman, Shashikant and many others have been transferred/shifted/accommodated at Aurangabad plant of the respondent company. Such an argument is devoid of any force in view of the admission of the petitioner that the details of full & final payment was already paid to him. He admitted that the full and final compensation amount was credited in his Bank Account and he had utilized the same for his personal use.

39. Another limb of argument advanced before me by the Ld. Counsel for the petitioner that one Shri Thakur Dass, being junior employee of the petitioner on acceptance of VRS only after rendering three years of service paid the compensation of ₹11,73,742/- (Eleven Lakhs Seventy Three Thousand Seven Hundred Forty Two) as full and final settlement amount. Shri Thakur Dass was paid compensation at the rate of four months for each completed year, apart from the gratuity, early bird benefits, medical expenses, skill upgrade development etc. whereas while calculating the full & final compensation to the petitioner, the respondent management had taken into consideration two month's salary and also had not been paid anything like early bird benefits, medical expenses, skill up-grade development benefits etc. despite rendering the services of thirteen years. It is also contended that no such VRS was ever offered to the petitioner. Such an argument advanced before me by Ld. Counsel for the petitioner are again not convincing and

acceptable as the same are devoid of force, in view of admission made by the petitioner in his cross-examination, whereby, is crystal clear that as many as 98 peoples have opted for VRS before 2019. The petitioner had volunteered that it was meant for only those workers those who have less than nine years of service. The onus heavily lies on the petitioner to prove the same on record. My attention was drawn that notice was issued by the respondent management but no such notice was produced on record. By stretch of no imagination, the petitioner cannot shoulder his onus or responsibility from proving the fact that the VRS was launched for the workers those who have rendered nine years of service only. The petitioner has miserably failed to prove the same on record. However, such a feeble attempt by the petitioner to refer the case of Mr. Thakur Dass, who was one of the beneficiary of VRS Scheme and the plea raised from the side of the petitioner that such VRS Scheme was not offered to the petitioner. Admittedly, Shri Thakur Dass was one of the beneficiary of the VRS Scheme. The petitioner was the beneficiary of section 25-FFA of the Act. Both the beneficiaries are standing on the different pedestal or footings and such VRS Scheme and compensation paid under the section 25-FFF of the Act, regarding the closure of the unit cannot be at all be linked, merged or compared with each other. There is absolutely no nexus or connection in between the launch of VRS Scheme as well as the closure of any undertaking under section 25-FFF of the Act. Admittedly, VRS Scheme was launched in the year 2019 whereas notice of closure was issued in the year 2020. So, the allegations of the petitioner that Shri Thakur Dass being junior person to him has received more amount, as compared than that of the petitioner, who rendered only three years (3) of service as compared to thirteen years (13) of service rendered by the petitioner. The petitioner was paid handsome amount of compensation under various head like ex-gratia, retrenchment compensation etc. on account of full and final along-with all legal dues.

40. One more contention advanced/raised at bar by the Ld. Counsel for the petitioner that there was non-compliance of section 25-N of the Act. Similarly, the non-compliance of section 25-M, 25-O of the Act would attract the provisions of section 25-Q and 25-R to dealt the respondent company with penalty/imprisonment as provided under the Act. It is argued the termination of the services of the petitioner is nothing but “retrenchment” under section 2-oo of the Act. The relevant provisions of the Act i.e section 25-AAA and 2-rrr were not taken into consideration. At the very out-set section 25-N is proviso to Chapter-V-B of the Act. Here, I would like to pause for a movement to clear that Chapter-V has been divided as many as into three parts such as Part V-A, V-B and V-C, which is covering the subject “**lay off and retrenchment**”, “**special provisions relating to lay-off, retrenchment and closure in certain establishment**”, and “**unfair labour practices**”, section 25-A to section 25-J of the Act, are described under Chapter V-A of the Act meant for layoff and retrenchment. On the other hand, Chapter V-B relating to the special provisions of layoff, retrenchment and closure of establishment covered section 25-K onwards to section 25-S of the Act. Chapter V-C deals with unfair labour practices covering section 25-T and section 25-O of the Act. Both the Chapters V-A and V-B of the Act are based on two different footings. And would be applicable in different and distinct situations. Both the parties are alleging their case to be covered under different Chapters. The petitioner had tried his level best to invoke the provisions of section 25-N of the Act provided under Chapter V-B whereas the case of the respondent is that unit or undertaking was closed under section 25-FFA and the petitioner was accommodated with compensation as provided under section 25-FFF of the Act. The perusal of statutory notice depicts that the respondent management had expressed its intention to close the unit. In Chapter V-A and V-B, the provisions of section 25-F, 25-FFF and 25-N provides the conditions precedent to the retrenchment of a workman. The procedure prescribed under this provision are pertaining to the issuance of notice prior to the retrenchment i.e two month’s notice in section 25-FFF and three month’s in section 25-N of the Act. To my mind, the closure of an undertaking and establishment would be actually and factually covered under section 25-FFA of the Act provided under Chapter V-A. There were as many as 93 workers working in the company, after the year 2019, hence, regarding the termination of the services of the petitioner in pursuance to the closure of the factory, does not at all attract to the provisions of section 25-N of the Act. At

the cost of repetition, the law of the land as envisaged regarding three month's notice wages to be paid under section 25-N in Chapter V-B of the Act, was not at all applicable or attracted to the factory of the respondent management rather it is the application of Chapter V-A of the Act, which was to be applied in the factory of respondent management and, as such, the question of making the payment of three months wages does not arise at all. The respondent company had already paid full & final amount of compensation at the rate of two month's or sixty days notice, as per completed year of service as per the requirement of the law. The respondent company had duly complied with the provisions as laid down under Chapter-V-A of the Act. The entire efforts put in by Ld. Counsel for the petitioner to cover or compare his case by the application of section 25-N in Chapter V-B of the Act, is not sustainable in the eyes of law as the same is devoid of any force.

41. More-so-over, the Government of Himachal Pradesh vide its publication in Government Gazette dated 28.02.2022 whereby the industrial disputes HP amended Act 5 of 2022, assented by president on 25.12.2021, known as industrial dispute amended Act, 2020, whereby the amendment in section 22- 25-F and 25-K, had been repealed by Ordinance No. 20.

42. Furthermore, in view of admission during cross-examination by the petitioner that there were 98 people in 2019, those who have opted for VRS Scheme. Again, it is argued that there was supervisory and managerial staff who have been adjusted at Baddi Plant and many others have been transferred at distinct places i.e Aurangabad, Hyderabad Plant etc. The submission made by the Ld. Counsel for the petitioner is devoid of force. The enhancement of compensation to the tune of ₹50 lacs (₹Fifty lacs) is merely a hypothetical assumption, such plea and contention raised at bar are required to be proved by leading cogent and clinching evidence. It is crystal clear that the condition precedent to retrenchment of workers in closure of establishment/unit has been fairly and squarely covered under section 25-FFA or 25-F of the Act and not under section 25-N of the Act.

43. One more significant feature of the case whereby the Ld. Counsel for the petitioner has strenuously argued before this Court vis-à-vis by reading the contents of the averments made in the claim petition as well as documentary proof supplied on record, importantly appointment letter, probation letter, confirmation letter, refusal to accept letter, demand notice etc. The contention raised thereby that as per the terms and conditions of the appointment letter, the normal age for retirement has been provided to be 60 years (Sixty years) and the respondent management in its sole discretion also reserves right thereby to shift/transfer the petitioner in any of the other undertaking or establishment or unit or sister concern as provided in the appointment letter, probation letter and confirmation letter etc., which are not at all meant for a particular unit i.e respondent no.2. It is by and large that the services of the petitioner were engaged through appointment letter issued on the letter head of the company mentioning thereby the local address of the present unit i.e respondent no.2. Admittedly, the petitioner was engaged by the respondent no.1 to work in the present unit (respondent no.2), therefore, the petitioner was the employee of respondent no.1 for all intents and purposes. I am of the considered humble opinion that the petitioner cannot derive any undue benefit or seek advantageous stand out of the same. It is equally proved on record that vide appointment letter the company had provided the complete address of the present undertaking or establishment on the letter head of the company. The argument advanced by the Ld. Counsel for the petitioner that the VRS was not offered to the petitioner, no notice has been served regarding the VRS to the petitioner and no efforts were made by the company to adjust or accommodate the petitioner to other subsidiary or sister concern, any of its establishment and so on. The petitioner was adequately compensated. The respondent no.2 unit is a closed undertaking. Moreso, the petitioner who is under moral obligation to prove his case by leading cogent and clinching evidence, however, the petitioner has miserably failed to do so.

44. Their Lordship of Hon'ble Apex Court in a case titled as ***The Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Versus The Presiding Officer,***

Labour Court, Chandigarh and Others AND The Divisional Controller, Mahaasthra State Road Transport Corporation, Amravati Versus Shri Chandrashehar Maribhan Deshmukh and Another and etc. LLR 1990 Supreme Court 410 and Equivalent citations held in paras 76 to 78 reads as hereunder:

76. For the purpose of harmonious construction, it can be seen that the definitions contained in section 2 are subject to their being anything repugnant, in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are the giving of one month's notice indicating the reasons for Retrenchment and payment of the wages for the period of the notice. Section 25-FF provides for compensation to workmen in case of transfer Of undertakings. Very briefly, it provides that Every workmen who has been in continuous Service for not less than one year in an undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F "as if the workman had been retrenched"(Emphasis Supplied). Section-FFA Provides that sixty day's notice must be given of intention to close down any undertaking and section 25-FFF provides for compensation to workman in case of closing down of undertakings. Very briefly stated section 25-FFF which has been already discussed lays down that "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched". (Emphasis Supplied). Section 25-H provides for re-employment of the retrenched workman. In brief, it provides that where any workman are retrenched, and the employer proposes to take into his employment any retrenched workman person, he shall, give an opportunity to the retrenched workman to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to the workman "deemed to be retrenched" a right to claim re-employment as provided in section 25-H. In such cases, as specifically provided in the relevant sections the workman concerned would only be entitled to notice and compensation in accordance with section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workman is "as if the workman had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of section 25-F.
77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answered to this question. Firstly, those rights may have been affected by the introduction of Section 2 (oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the workman, perhaps for

immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *stat pro ratione voluntas populi* ; the will of the people stands in place of a reason.

- 78. Regarding the seeming gaps in the definition one would aptly remember what Lord Simonds said against the view that the court having discovered the intention of the Parliament must proceed to fill in the gaps and what the legislature had not written the court must write.**

“It appears to me to be a naked usurpation of the legislative function under the thin dispute of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act”,

45. Bearing in mind the attendant facts and circumstances of the case as well oral and the documentary evidence as well and after considering the final arguments, my inference is that the services of the workman have not been terminated illegally rather the petitioner had been paid full and final compensation in lieu of closure of an undertaking or establishment.

46. More-so-over, during the course of arguments, it is argued on behalf of the Ld. Counsel for workman that compensation amount can be refunded at any time, the meagre amount of compensation used by the petitioner is not a valid ground, rather he/she continues to be in service of the management. Therefore, the services of the petitioner may kindly be reinstated. In my humble opinion this argument is fallacious one since the full and final compensation was paid to the claimant in the eventuality of the closure of an undertaking/establishment in compliance to the provisions of section 25-FFA and 25-FFF of the Act. He/she had duly accepted the compensation amount on the same day and it has become final and irrevocable and it cannot be refunded on subsequent date. Here, I am supported by Hon'ble Supreme Court judgment in **ITLD Company Versus ITLD workers , AIR 1970 Supreme Court 860** wherein it was held that :

"The only test to be applied is of the whether the closure is real and genuine or not, that a closure would not be genuine where the unit or undertaking is found to be open and functional."

47. I am also supported by Hon'ble High Court of in **India Hume Pipe Company versus their workman, 1968 AIR 1002**, wherein it has been held as under:

"The motive of the closure is not at all a relevant factor."

48. I also placed reliance in **Authorized Association of Upper India versus Labour Court and Others 2006 LLR 851 Supreme Court**, it was held that :

"The burden of proof establishing relationship to Employer and Employee lies upon the person who claim for the same. "

49. I am also fortified by the decision of the Hon'ble Supreme Court in **District Red Cross Society versus Babita Arora and Others, Appeal (Civil) No. 3735-3738 of 2007, decided on 14th August, 2007**, wherein it is held that :

"That establishment of an employer should be closed. If a unit or part of an undertaking which has no functional integrity with other units is closed, it will amount

to closure within the meaning of Section 25FFF of the Act. In *J.K. Synthetics v. Rajasthan Trade Union Kendra & Ors.* (2001) 2 SCC 87, it has been observed that the closure need not be of the entire plant. A closure can also be of a part of the plant. In *Maruti Udyog Ltd. v. Ram Lal & Ors.* (2005) 2 SCC 638, it was held as under in Para 21 of the report:

"21. How far and to what extent the provisions of Section 25F of the 1947 Act would apply in case of transfer of undertaking or closure thereof is the question involved in this appeal. A plain reading of the provisions contained in Section 25FF and Section 25FFF of the 1947 Act leaves no manner of doubt that Section 25F thereof is to apply only for the purpose of computation of compensation and for no other. The expression "as if" used in Section 25FF and Section 25FFF of the 1947 Act is of great significance. The said term merely envisages computation of compensation in terms of Section 25F of the 1947 Act and not the other consequences flowing there from. Both Section 25FF and Section 25FFF provide for payment of compensation only, in case of transfer or closure of the undertaking. Once a valid transfer or a valid closure comes into effect, the relationship of employer and employee does not survive and ceases to exist. Compensation is required to be paid to the workman as a consequence thereof and for no other purpose."

The position in law is, therefore, well settled that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act. The Tribunal and also the High Court clearly erred in holding that as other units of the appellant Red Cross Society like Drug De-Addiction-cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra were functioning, the termination of services of the respondent would amount to retrenchment. The Maternity Hospital was functioning as a distinct entity. It was not receiving any grant from the Government and was being run entirely on charitable basis from donations received from public. Due to financial stringency, the Maternity Hospital had to be closed down. The other three units, viz., Drug De-Addiction- cum-Rehabilitation Centre, Family Planning Centre and Viklang Kendra are receiving grants from government and are functioning as separate entities and the mere fact that they have not been closed down, cannot lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non-compliance of the provisions of Section 25F of the Act.

10. In view of the findings recorded above, the respondent would be entitled to compensation only in accordance with Section 25FFF of the Act and the award for reinstatement in service with back wages passed by the Tribunal which was affirmed by the High Court cannot be sustained and must be set aside.."

50. Again, I am also fortified by the decision of Hon'ble Apex Court of in *Globe Ground India Employees Union Versus Lufthansa German Airlines and Another*, Civil Appeal Nos. 4076-4077 of 2019 (Arising out of S.L.P.(C) Nos.25341-42 of 2017), decided on 23 April 2019 wherein it has been held as under:

"It is held that for the proceedings arising out of the Industrial Dispute Act, 1947, the provisions of the Evidence Act, in their strict sense, likewise do not apply to the proceedings. It is held that the authorities to whom the reference is made under the

Industrial Dispute Act, 1947, being quasi-judicial in nature, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.

It all depends on the facts of each case; the allegation made and the nature of adjudication proceedings etc.

Whenever a reference is made, the Industrial Court shall confine its adjudication to the point of reference and matter incidental thereto”.

51. Having said so, in the peculiar facts and Circumstances of the instantaneous case, I am of the considered opinion that the case law as relied upon by the learned counsel for the petitioner would not render any rescue or any sort of assistance in order to substantiate the claim petition filed by the learned counsel for the petitioner to support the petitioner’s case.

52. Moreso, It would be pertinent to mention that Learned counsel for the petitioner has strenuously argued that the perusal of Section 10 (4) of the Act provides that the Labour Court Shall confine it’s adjudication to the point of dispute referred to it and matters incidental thereto. The use of an expression “*Matters incidental thereto*” has been more elaborately explained in the judgment passed by the Hon’ble Supreme court in case *The Management Hotel Imperial, New Delhi and others versus Hotel Worker’s Union* , AIR 1959 SC 1342 and *Goa MRF Employees Union versus MRF Limited 2010 (15) SCC 432*, where it is held that there is no need for specifically referring to the matter which is otherwise incidental. Learned Counsel also relied upon *Godrej and Boyce Manufacturing Co. Ltd. versus Rameshwar P. Gawade 2020 (5) SCC 316* whereby it is held that when letter of appointment categorically stated that the services of the workman are transferable? He also relied upon *Workman Rashtriya Colliery Mazdoor Sangh versus Bharat Cooking Coal Ltd. 2016 (9) SCC 431*, where there are two sets of workman serving in the same unit/establishment cannot be given unequal treatment. He again relied on the decision of the Hon’ble Supreme Court in a case *Rajneesh Khajuria versus M/s Wockhardt Ltd. and Another Civil Appeal 8989 of 2019 arising out of SLP Civil 6692 of 2015 decided on 15th January, 2020* and also judgment of Central Administrative Tribunal Hyderabad Bench, in case *K Venu Gopal Rao versus The Union of India and Others OA No. 020/326/2020 decided on 17th July, 2020* the transfer of the workman as per the terms and conditions of the employment and the grant of an increment on rendering the services for 12 months is a condition precedent. Any change in the same cannot be made without putting those adversely affected on the notice, as same the principles of the Natural Justice,. Such an attempt, if made, would have enabled the respondents to work out the remedies within the ambit of rules and law and so on. As a matter of fact, all the case law relied upon by learned counsel for the petitioner relating to the issue of the transfers of the workman/ employee or relating to reinstatement/ back wages etc. are clearly distinguishable in view of distinct facts and circumstances of the case.

53. This apart before penning down the judgment, I would like to comment upon the perennial nature of the Industrial Dispute received from the Appropriate Government regarding the demand raised by the petitioner for reinstatement after receiving full & final settlement amount and the dispute arisen between the petitioner and the respondent management. Once their relationship has been severed by raising the demand notice on behalf of the petitioner to raise the demand that the retrenchment/termination/ closure of the factory under section 25-FFA of the Act is not proper and justified. At the cost of repetition, the entirety of the distinct facts and circumstances of the case would clearly demonstrates that in order to sustain his case has to bolster with double strength by raising the demand notice running into Nineteen pages (19). Henceforth, the petitioner has preferred the claim petition which is also running into Nineteen pages(19), countered by the reply on behalf of the respondent management running into Thirty one pages (31), followed by rejoinder

running into Twenty nine pages (29). Thereafter, the matter was taken up for recording the evidence of the petitioner whereby the petitioner in order to substantiate his allegations has penned down as many as forty-four pages (44). The penning down of so many pages on behalf of the petitioner by raising demand notice, filing claim petition, rejoinder, examination-in-chief and so on, yield no fruitful results to the petitioner but amounting to paper work only.

54. With all humility, all the authorities relied upon by learned counsel for the petitioner are clearly distinguishable and does not attract to the attendant facts and circumstance of the case in hand, which are absolutely on different footings as found in these authorities. The law shown to me are not at all applicable. All the contention raised at the bar are not convincing and acceptable to this Tribunal. This is for the reasons that the initial burden rests on the shoulder of the petitioner workman **Firstly**, he is the employee of the respondent, which he has miserably failed to do so. **Secondly**, there is severance and does not exist the Employer Employee relationship between the parties. **Thirdly**, once the relationship does not exist than there is no value attached or credence to be given to the documentary evidence relied upon by the workman petitioner such as appointment letter, confirmation letter, probation letter, increment letter, refusal to accept letter etc. **Fourthly**, the industrial establishment has been subjected to the closure by following the provision of section 25 FFA of the Act. **Fifthly**, the grievances of the petitioner workman has been duly redressed after making payment of the compensation to him by adhering to the principles laid down in section 25 FFF of the Act. Consequently, all argument advanced before me by learned counsel are devoid of merits and the same assumes no significance in the eyes of law.

55. For the foregoing reasons, As a binding precedent as well the peculiar nature of the **Industrial Dispute**, facts and circumstances of the case and also in view of above stated reasons, it is held that the workman/petitioner would be entitled to compensation in accordance with section 25-FFF of the Act and the petitioner was adequately compensate by the respondent management by paying fair, just and reasonable compensation and the prayer of the petitioner for reinstatement in alternatively into services with continuity, seniority and full back wages cannot be sustained. So, the services of the petitioner workman ceased to an end for the reason of the closure of undertaking by the applicability of the section 25-FFA and 25-FFF of the Act. It will therefore not be possible to order the reinstatement. It may however be stated that because of the closure of the establishment by the management the petitioner has been duly compensated with handsome compensation. As provided under section 25-FFA, the plea taken by the petitioner by invoking the provisions of section 25-FFF of the Act and that he was forced to accept his full and final compensation is also not tenable under law as he has failed to place/prove on record any complaint to the authorities in this regard. Hence, the demand raised by the petitioner for his reinstatement in service w.e.f. 21.12.2020 before the management of respondent after receiving his full & final amount of ₹ 19,20,868/- or in alternative to enhance the compensation amount upto ₹50 lacs (₹Fifty Lacs), is not proper and said to be justified and as such the petitioner is not entitled to any relief. Accordingly, this issue is answered in negative.

56. No other point or contention was raised/urged.

ISSUE NO. 2

57. In support of this issue no evidence has been aduced by the respondent, which could legitimately goes to show that as to how the present claim petition is neither competent nor maintainable in the present form, especially when the same has been presented before the Court in pursuance to the reference notification received from the appropriate government. The issue in question is answered in negative.

RELIEF

58. As a Sequent effect, in view of my previous discussion, evaluation and findings on the aforesaid issues 1 & 2, **the petitioner workman has miserably failed to establish on record that he had any relationship of employer and employee with the respondent management. The merit's of the claim petition of the petitioner deserves dismissal and the same is hereby ordered to be dismissed. Consequently, the terms of the present reference stands hereby answered in negative, as it is conclusively held that the relationship of the petitioner workman and respondent management as employer and employee has been severed and does not exists anymore. So, the petitioner is not entitled for any sort of relief from this Tribunal.**

59. Let a copy of this award be communicated to the Appropriate Government for its publication in the official gazette within 30 days of the receipt of the copies of the award in accordance with law. File be consigned to the record room after necessary completion by the concerned Ahlmad.

Ordered accordingly.

Announced in the open Court today on this 3rd Day of May, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**In the Court of Sanjay Kumar H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur, Himachal Pradesh**

1. Mahender Kumar aged 23 years s/o Sh. Hans Raj, r/o Village Kathiyanwin, P.O. Karohta, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

2. Diksha Kumari aged 23 years d/o Sh. Pawan Kumar, r/o Village Dasmal, P.O. Ladrour, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Mahender Kumar aged 23 years s/o Sh. Hans Raj, r/o Village Kathiyanwin, P.O. Karohta, Tehsil Bhoranj, Distt. Hamirpur (H.P.) & Diksha Kumari aged 23 years d/o Sh. Pawan Kumar, r/o Village Dasmal, P.O. Ladrour, Tehsil Bhoranj, Distt. Hamirpur (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 19-06-2023 at Mukheteshwar Mahadev Mandir, V.P.O. Chandpur, Tehsil Sadar, Distt. Bilaspur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 12-09-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 09-08-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur (H.P.).*

**In the Court of Sanjay Kumar H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur, Himachal Pradesh**

1. Joginder Kumar aged 59 years s/o Sh. Bakshi Ram, Village Kakkar, P.O. Chandruhi, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

2. Urmila Devi aged 49 years d/o Sh. Vishan Dass, Village Bharnog (Nabahi), P.O. Nabahi, Tehsil Sarkaghat, Distt. Mandi (H.P.).

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Joginder Kumar aged 59 years s/o Sh. Bakshi Ram, Village Kakkar, P.O. Chandruhi, Tehsil Bhoranj, Distt. Hamirpur (H.P.) & Urmila Devi aged 49 years d/o Sh. Vishan Dass, Village Bharnog (Nabahi), P.O. Nabahi, Tehsil Sarkaghat, Distt. Mandi (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 07-03-1991 at Village Kakkar, P.O. Chandruhi, Tehsil Bhoranj, Distt. Hamirpur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 27-09-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 25-08-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur (H.P.).*

**In the Court of Sanjay Kumar H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur, Himachal Pradesh**

1. Ajit Singh aged 45 years s/o Sh. Roop Singh, Village & P.O. Chamboh, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

2. Mamta Devi aged 31 years d/o Sh. Sohan Singh, Village Basair, P.O. Basair, Tehsil Nankhari, District Shimla (H.P.) at present Village Majhot, P.O. Baldook, Tehsil Nadaun, District Hamirpur (H.P.).

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Ajit Singh aged 45 years s/o Sh. Roop Singh, Village & P.O. Chamboh, Tehsil Bhoranj, Distt. Hamirpur (H.P.) & Mamta Devi aged 31 years d/o Sh. Sohan Singh, Village Basair, P.O. Basair, Tehsil Nankhari, District Shimla (H.P.) at present Village Majhot, P.O. Baldook, Tehsil Nadaun, District Hamirpur (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 06-06-2020 at village & P.O. Chamboh, Tehsil Bhoranj, Distt. Hamirpur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 04-10-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 31-08-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur (H.P.).*

**In the Court of Sanjay Kumar H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur, Himachal Pradesh**

1. Dinesh Kumar aged 23 years s/o Sh. Gurdev, r/o Village Bakhota, P.O. Karohta, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

2. Anamika Sharma aged 22 years d/o Sh. Vijay Kumar, Village Dasmal, P.O. Ladrour, Tehsil Bhoranj, Distt. Hamirpur (H.P.).

Versus

General Public

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Dinesh Kumar aged 23 years s/o Sh. Gurdev, r/o Village Bakhota, P.O. Karohta, Tehsil Bhoranj, Distt. Hamirpur (H.P.) & Anamika Sharma aged 22 years d/o Sh. Vijay Kumar, Village Dasmal, P.O. Ladrour, Tehsil Bhoranj, Distt. Hamirpur (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 22-06-2023 at Mukteshwar Mahadev Mandir, Distt. Bilaspur (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 09-10-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 31-08-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Bhoranj, Distt. Hamirpur (H.P.).*

In the Court of Sh. Rakesh Kumar Sharma, H.A.S., Marriage Officer-cum-Sub-Divisional Magistrate, Sujanpur, Distt. Hamirpur (H. P.)

In the matter of :

1. Raj Kumar age 49 years s/o Jagdish Chand, r/o Village & P.O. Ree, Tehsil Sujanpur, District Hamirpur (H.P.).

2. Shashi age 49 years d/o Rasila Ram, r/o Village & P.O. Upper Lambagaon, Tehsil Jaisinghpur, Distt. Kangra (H.P.) .. *Applicants.*

Versus

The General Public

.. *Respondent.*

Application for the registration of marriage under section 16 of Special Marriage Act, 1954 (Central Act) as amended by Marriage Laws (Amendment Act 01, 49 of 2001).

Raj Kumar age 49 years s/o Jagdish Chand, r/o Village & P.O. Ree, Tehsil Sujanpur, District Hamirpur (H.P.) and Shashi age 49 years d/o Rasila Ram, r/o Village & P.O. Upper Lambagaon, Tehsil Jaisinghpur, Distt. Kangra (H.P.) have filed an application alongwith affidavits in this court under section 16 of Special Marriage Act, 1954 (Central Act) as amended by the

Marriage Laws (Amendment Act 01, 49 of 2001) that they have solemnized their marriage ceremony on 07-02-1998 at V.P.O. Upper Lambagaon, District Kangra (H.P.) as per Hindu Rites and Customs and they are living together as husband and wife since then. Hence their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objections regarding this marriage can file the objections personally or in writing before this court on or before 21-09-2023. After that no objections will be entertained and marriage will be registered accordingly.

Issued today on 18-08-2023 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sujanpur, Distt. Hamirpur (H.P.).*

**In the Court of Sh. Manish Kumar Soni, HPAS, Marriage Officer-cum-Sub-Divisional
Magistrate, Hamirpur, District Hamirpur (H.P.)**

In the matter of :

1. Sh. Rajesh Kumar Pathania s/o Shri Dharam Singh Pathania, r/o Village Sarlin, P.O. Chamned, Tehsil & District Hamirpur (H.P.).

2. Smt. Tripta Devi d/o Sh. Lekh Ram, r/o Village Lajhyani, P.O. Nagrota Gazian, Tehsil Bhoranj, District Hamirpur (H.P.) . *Applicants.*

Versus

General Public

Subject.— Notice for Registration of Marriage.

Sh. Rajesh Kumar Pathania & Smt. Tripta Devi have filed an application U/S 15 & 16 of Special Marriages Act, 1954 alongwith affidavits and supporting documents in this court of undersigned, stating therein that they have solemnized their marriage on 01-08-2023 as per the Hindu ritual and customs.

Therefore, the general public is hereby informed through this notice that if any person having any objection regarding this marriage may file his/her objections personally or in writing before this court on or before 10-10-2023. In case no objection is received by 10-10-2023, it will be presumed that there is no objection to the registration of the above said marriage and the same will be registered accordingly.

Issued under my hand and seal of the court on 31-08-2023.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Sub-Division Hamirpur, District Hamirpur (H.P.).*

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, नादौन,
जिला हमीरपुर (हि0प्र0)**

श्रीमती केसरी देवी पुत्री कर्म चन्द, महाल चुठियार, डाकघर वलडूहक, तहसील नादौन, जिला हमीरपुर (हि0प्र0)

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती केसरी देवी पुत्री कर्म चन्द, महाल चुठियार, डाकघर वलडूहक, तहसील नादौन, जिला हमीरपुर (हि0प्र0) का आवेदन पत्र समस्त रिकार्ड व शपथ—पत्र सहित इस कार्यालय में प्राप्त हुआ है। केसरी देवी पुत्री कर्म चन्द अपनी जन्म तिथि 01-05-1947 को ग्राम पंचायत वलडूहक के रिकार्ड में दर्ज न करवा सकी तथा अब वह उक्त जन्म तिथि दिनांक 01-05-1947 को सम्बन्धित ग्राम पंचायत वलडूहक में दर्ज करवाना चाहती है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त केसरी देवी पुत्री कर्म चन्द की जन्म तिथि 01-05-1947 को ग्राम पंचायत वलडूहक में दर्ज करने बारे कोई आपत्ति हो तो वह असालतन या वकालतन दिनांक 06-10-2023 को तहसील कार्यालय नादौन, जिला हमीरपुर में प्रातः 11.00 बजे उपस्थित होकर अपना उजर पेश कर सकता है। कोई भी उजर/एतराज न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जायेगी एवं केसरी देवी पुत्री कर्म चन्द की जन्म तिथि 01-05-1947 को ग्राम पंचायत वलडूहक में दर्ज करने के आदेश नियमानुसार पारित कर दिए जाएंगे।

यह इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 04-09-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, नादौन,
जिला हमीरपुर (हि0प्र0)**

श्री राजेश कुमार पुत्र लक्ष्मण दास, महाल पुतडियाल, डाकघर पुतडियाल, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना—पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री राजेश कुमार पुत्र लक्ष्मण दास, महाल पुतडियाल, डाकघर पुतडियाल, तहसील नादौन, जिला हमीरपुर (हि0प्र0) का आवेदन पत्र समस्त रिकार्ड व शपथ—पत्र सहित इस कार्यालय में प्राप्त हुआ है। राजेश

कुमार पुत्र लक्ष्मण दास अपनी जन्म तिथि 23-02-1983 को ग्राम पंचायत पुतडियाल के रिकार्ड में दर्ज न करवा सका तथा अब वह उक्त जन्म तिथि दिनांक 23-02-1983 को सम्बन्धित ग्राम पंचायत पुतडियाल में दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त राजेश कुमार पुत्र लक्ष्मण दास की जन्म तिथि 23-02-1983 को ग्राम पंचायत पुतडियाल में दर्ज करने बारे कोई आपत्ति हो तो वह असालतन या वकालतन दिनांक 31-10-2023 को तहसील कार्यालय नादौन, जिला हमीरपुर में प्रातः 11.00 बजे उपस्थित होकर अपना उजर पेश कर सकता है। कोई भी उजर/एतराज न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जायेगी एवं राजेश कुमार पुत्र लक्ष्मण दास की जन्म तिथि 23-02-1983 को ग्राम पंचायत पुतडियाल में दर्ज करने के आदेश नियमानुसार पारित कर दिए जाएंगे।

यह इशतहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 26-05-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, नादौन,
जिला हमीरपुर (हि0प्र0)**

श्री रणजीत सिंह राणा पुत्र ज्ञान चन्द, महाल कोहाल, डाकघर बलडूहक, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

विषय.—प्रार्थना-पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री रणजीत सिंह राणा पुत्र ज्ञान चन्द, महाल कोहाल, डाकघर बलडूहक, तहसील नादौन, जिला हमीरपुर (हि0प्र0) का आवेदन पत्र समस्त रिकार्ड व शपथ-पत्र सहित इस कार्यालय में प्राप्त हुआ है। श्री रणजीत सिंह पुत्र ज्ञान चन्द अपनी पुत्री निशा राणा की जन्म तिथि 25-10-1988 को ग्राम पंचायत बलडूहक के रिकार्ड में दर्ज न करवा सका तथा अब वह उक्त जन्म तिथि दिनांक 25-10-1988 को सम्बन्धित ग्राम पंचायत बलडूहक में दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त निशा राणा पुत्री रणजीत सिंह राणा की जन्म तिथि 25-10-1988 को ग्राम पंचायत बलडूहक में दर्ज करने बारे कोई आपत्ति हो तो वह असालतन या वकालतन दिनांक 31-10-2023 को तहसील कार्यालय नादौन, जिला हमीरपुर में प्रातः 11.00 बजे उपस्थित होकर अपना उजर पेश कर सकता है। कोई भी उजर/एतराज न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जायेगी एवं निशा राणा पुत्री रणजीत सिंह राणा की जन्म तिथि 25-10-1988 को ग्राम पंचायत बलडूहक में दर्ज करने के आदेश नियमानुसार पारित कर दिए जाएंगे।

यह इशतहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 26-05-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, नादौन,
जिला हमीरपुर (हि0प्र0)

श्रीमती बेबी पुत्री अमरजीत, महाल चडहू, मौजा सपडोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0)।

बनाम

आम जनता

श्रीमती बेबी पुत्री अमरजीत, महाल चडहू, मौजा सपडोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0) ने दिनांक 06-06-2023 को इस कार्यालय में एक प्रार्थना-पत्र प्रस्तुत किया है कि प्रार्थिया अपना नाम कागजात माल महाल चडहू, मौजा सपडोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0) में पुष्पा देवी पुत्री अमरजीत सिंह दर्ज है परन्तु अन्य जगह जैसे कि स्कूल प्रमाण-पत्र, राशन कार्ड आदि में प्रार्थिया का नाम बेबी पुत्री अमरजीत सिंह दर्ज है। प्रार्थिया का कहना है कि यह दोनों नाम उसी के हैं। प्रार्थिया अब दुरुस्ती करवाकर कागजात माल महाल चडहू, मौजा सपडोह, तहसील नादौन, जिला हमीरपुर (हि0प्र0) में अपना नाम पुष्पा देवी उपनाम बेबी पुत्री अमरजीत सिंह दर्ज करवाना चाहती है।

अतः इस गजट इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थी के नाम को दुरुस्त करने बारे कोई उजर एवं एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 31-10-2023 को सुबह 10 बजे मुकाम तहसील कार्यालय नादौन हाजिर अदालत होकर अपना उजर पेश कर सकता है। तारीख पेशी के बाद किसी किस्म का एतराज काबिले समायत न होगा तथा प्रार्थी के प्रार्थना-पत्र पर नाम दुरुस्ती बारे आवश्यक आदेश पारित कर दिये जायेंगे।

यह इश्तहार मोहर अदालत व मेरे हस्ताक्षर से आज दिनांक 26-08-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—

नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
नादौन, जिला हमीरपुर (हि0प्र0)।

CHANGE OF NAME

I, Chunni Lal s/o Sh. Ghanshyam Dass, r/o Ganga Kunj, Dev Nagar Kasumpti, Shimla (H.P.) have changed my name as Kabir Verma instead of Chunni Lal vide Civil Suit No. 111-1 of 2018/17, instituted on 02-01-2017 and decided on 03-11-2022 in the Court of Senior Civil Judge, Court No. 1, Shimla, Distt. Shimla (H.P.). All concerned to note please.

CHUNNI LAL
s/o Sh. Ghanshyam Dass,
r/o Ganga Kunj,
Dev Nagar Kasumpti, Shimla (H.P.).

CHANGE OF NAME

I, Chander Kala d/o Sh. Gian Dutt, r/o Village Dhalot, P.O. Halog Dhami, Tehsil & Distt. Shimla (H.P.) have changed my name as Kajal instead of Chander Kala *vide* Case No. 18/ 2020, instituted on 05-11-2020 and decided on 17-01-2023 in the Court of Civil Judge, Court No. 7, Shimla, Distt. Shimla (H.P.). All concerned to note please.

CHANDER KALA
*d/o Sh. Gian Dutt,
r/o Village Dhalot, P.O. Halog Dhami,
Tehsil & Distt. Shimla (H.P.).*

CHANGE OF NAME

I, Vikas Kumar s/o Sh. Tilak Raj, r/o Village & P.O. Chhanni, Tehsil Indora, Distt. Kangra (H.P.) do hereby declare that for the information of general public and all concerned whomsoever that I have changed the name of my son born on 25-08-2006 from YATIN KUMAR to YATIN LODHI as per aadhar card.

VIKAS KUMAR
*s/o Sh. Tilak Raj,
r/o Village & P.O. Chhanni,
Tehsil Indora, Distt. Kangra (H.P.).*

